

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

SAMUEL H. ROBINSON and J. W. RANDOLPH,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

VOLUME I.

(Pages 1 to 480, Inclusive.)

Upon Appeal from the United States District Court for the
Northern District of California, Southern Division.

FILED

JAN 29 1929

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

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San Francisco, California.

District Court of the United States, Northern District of California, Southern Division.

Clerk's Office.

No. 19,217.

UNITED STATES OF AMERICA

vs.

SAMUEL H. ROBINSON, J. W. RANDOLPH
et al.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please prepare transcript on appeal to include the following pleadings, papers, motions, proceedings and orders in the above-entitled cause:

1. Indictment.
2. Demurrers of the defendants Samuel H. Robinson and J. W. Randolph and orders thereon.
3. Petition for severance of Samuel H. Robinson and affidavit in support thereof and order thereon.

- 2 *Samuel H. Robinson and J. W. Randolph*
4. Motion of J. W. Randolph and Samuel H. Robinson for bill of particulars and order thereon.
 5. Record of the trial.
 6. Verdict of the jury.
 7. Motions for new trial of defendants Samuel H. Robinson and J. W. Randolph and orders denying same.
 8. Motions in arrest of judgments of Samuel H. Robinson and J. W. Randolph and orders denying same.
 9. Sentences and judgment.
 10. Notice of appeal.
 11. Petition for appeal and supersedeas and order allowing same. [1*]
 12. Assignment of errors.
 13. Bill of exceptions.
 14. Order settling and allowing bill of exceptions.
 15. All stipulations and orders extending time to settle bill of exceptions and extending term.
 16. This praecipe.
 17. Citation on appeal.

HAROLD C. FAULKNER,
JAMES B. O'CONNOR and
H. H. HARRIS,
Attorneys for Defendant J. W. Randolph.
R. B. McMILLAN,
Attorney for Deft. Samuel H. Robinson.

[Endorsed]: Filed Nov. 15, 1928. [2]

*Page-number appearing at the foot of page of original certified Transcript of Record.

In the Southern Division of the United States District Court for the Northern District of California.

INDICTMENT.

At a stated term of said court begun and holden at the City and County of San Francisco within and for the Southern Division of the Northern District of California on the first Monday of November, in the year of our Lord one thousand nine hundred and twenty-seven,—

The Grand Jurors of the United States of America, within and for the Division and District aforesaid, on their oaths present: THAT

Prior to the date on which the several letters, writings and circulars herein referred to were mailed and caused to be delivered by mail, as hereinafter alleged in the several counts in this indictment, HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, hereinafter called the defendants, had devised and intended to devise a scheme and artifice to defraud and for obtaining money and appropriate from the public in general, and in particular from a certain class of persons by means of certain false and fraudulent pretenses, representations and promises, that is to say, the persons (hereinafter called the "victims") could or might, by the means hereinafter described, be induced to send and pay their said money and to part with their said property to the said defend-

ants or to Cromwell Simon & Co., hereinafter referred to.

It was part of said scheme and artifice to defraud that the defendant Cromwell Simon should have issued to him by the Commissioner of Corporations of the State of California [3] a certificate authorizing him to offer for sale, negotiate for the sale of, and otherwise deal in securities in the State of California, and generally carry on the business of a broker in said state.

It was a further part of said scheme and artifice to defraud that defendants, Cromwell Simon and Harry M. Kassmir, as copartners, doing business under the firm name and style of Cromwell Simon & Co., should offer for sale and negotiate for the sale of and otherwise deal in securities in the State of California and generally carry on the business of brokerage in said state under the name of Cromwell Simon & Co.

It was a further part of said scheme and artifice to defraud that the defendants, Cromwell Simon and Harry M. Kassmir, should open brokerage offices in San Francisco, California, and that said Cromwell Simon and Harry M. Kassmir should be the proprietors of said brokerage office and the other defendants should be office managers and stock salesmen and agents of the said Cromwell Simon & Co.

It was a further part of said scheme and artifice to defraud that defendant Samuel H. Robinson should mail at San Francisco to Le Roy F. Pike at Reno, Nevada, articles of incorporation for a

new company to be called "Cromwell & Company, Inc.," at Reno, Nevada; that said defendant Robinson requested said Pike to obtain dummy directors and should regularly incorporate Cromwell & Company, Inc., under the laws of the State of Nevada.

It was a further part of the said scheme and artifice to defraud that the defendants, Samuel H. Robinson, Harry M. Kassmir and Cromwell Simon should visit Reno, Nevada, for [4] the purpose of attending a meeting of the directors of Cromwell & Company, Inc.

It was a further part of the said scheme and artifice to defraud that at the meeting of the Board of Directors of said company, defendant Kassmir should offer to subscribe \$50,000 worth of this company's stock and pay cash for it, and that said offer was put in the form of a resolution, seconded, voted and passed unanimously;

WHEREAS, in truth and in fact, as defendant then and there well knew, defendant Kassmir did not pay \$50,000 cash for said stock or anything at all.

It was a further part of the said scheme and artifice to defraud that the defendants should solicit and procure from said victims subscriptions and orders for shares of high-grade corporate stock and other securities, on the "Cromwell Simon and Co. Investment Plan," by false and fraudulent representations and promises as to the financial standing of the Cromwell Simon and Company and of the defendants Cromwell Simon and Harry M. Kassmir; by false and fraudulent representations

and promises as to the care and watchfulness exercised for the benefit of said victims by the said defendants over investments made with them by said victims, and generally by false and fraudulent representations and promises as to the alleged safety of purchasing high-grade stocks and other high-grade securities, through the said defendants and the said Cromwell Simon Company.

It was a further part of said scheme and artifice to defraud that the said defendants should, whenever possible, require the victims to deliver over to said defendants valuable securities as alleged collateral to secure deferred payments on stock subscribed for, and that the said defendants [5] should take and embezzle and convert such collateral securities to their own use and benefit without accounting to said victims therefor, and thus could and would defraud the said victims out of their money and property.

It was a further part of said scheme and artifice to defraud that defendants should induce and persuade the victims to purchase high-grade stock and other securities under the Cromwell & Simon Co. Investment Plan by means of certain false representations which the defendants did not then and there or ever intend to carry out or perform, made and communicated to the victims by means of letters, circulars and advertisements sent through the mail and statements made orally by defendants and by their agents.

It was a further part of the said scheme and artifice to defraud that the defendants in order to

induce their victims to part with their money and property should raise in said victims hopes and expectations of profit and reward far beyond the limits warranted by existing conditions by means of alluring, exaggerated, misleading, false and fraudulent representations, pretenses and promises, which representations, pretenses and promises are substantially and in effect as follows:

(1) That Cromwell Simon & Co. was a reputable brokerage company and the victims could rely upon the standing and financial responsibility of Cromwell Simon & Co.;

WHEREAS, in truth and in fact, as the defendants then and there well knew, the said company was not a responsible brokerage house, but of the character of a "bucket" shop and without business standing or financial resources sufficient to carry on a reliable brokerage business. [6]

(2) That the business of Cromwell Simon & Co. was to sell to victims high-grade corporate stock and other securities, particularly on the partial payment plan;

WHEREAS, in truth and in fact, as the defendants then and there well knew, Cromwell Simon & Co. did not sell to the victims high-grade corporate stock and other securities, or any stock or securities at all.

(3) That the defendants would obtain subscriptions from the victims for such stocks and other securities on the Cromwell Simon & Co. Investment Plan, and would immediately purchase the same at market price for and on account of the said victim

and that Cromwell Simon & Co. would hold the same so that the victim could be certain that the high-grade stocks and other securities would be on hand for them at any and all times when called for by them;

WHEREAS, in truth and in fact, as the defendants then and there well knew, Cromwell Simon & Co. did not immediately purchase such high-grade stocks and other securities at the market price for the account of the victims at the time said victims gave said company subscription for stock, or at all, and that the said company would not, and did not hold the same so that the victims could be certain that the stocks and securities would be on hand when called for.

(4) That interest would be charged on deferred payments due from victims on such high-grade stocks and other securities at the rate of 6 per cent per annum, in addition to service charge, and that the victim would draw, in the meantime, any dividends or interest declared or payable on the high-grade stock and other securities so purchased and held by them; [7]

WHEREAS, in truth and in fact, as the said defendants then and there well knew, Cromwell Simon & Co. did not and could not pay to the victims any dividends or interest declared or payable on such high-grade stocks or securities.

(5) That Cromwell Simon & Co. were particularly well qualified to advise victims when to buy and sell corporate stocks and other securities; that an investor subscribing for such corporate stock, or

other security, through the said company, would have the privilege of selling the same at any time he desired, and that the said defendants could be depended upon to give advice along such lines and would notify the victims when to sell to the best advantage;

WHEREAS, in truth and in fact, as the defendants then and there well knew, the said company was not well qualified to advise the victims when to buy and sell corporate stocks and other securities; that the said victims could not rely upon said defendants for safe information or advice in the matter of buying or selling corporate stocks or other securities, but that the said defendants would only endeavor to procure from the victims the largest possible amounts of money and property, which money and property the said defendants would appropriate and embezzle to their own use and benefit.

And the Grand Jurors aforesaid, on their oaths aforesaid, present: THAT

Each and all of the aforesaid representations and promises made and planned to be made by defendants, as aforesaid, were false and untrue, and that the defendants when so devising said scheme and artifice to defraud, and [8] at the time of committing the several offenses, and each of the said several offenses, hereinafter in this indictment set forth, and at all times referred to in this indictment, well knew the same to be false and untrue, and the same were all and each made by the defend-

ants for the purpose of executing said scheme and artifice to defraud.

It was a further part of said scheme and artifice to defraud that the said defendants should, on or about April 8, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mr. G. A. Johnson, Chualar, California, which said envelope then and there contained and had enclosed therein the following letter:

“CROMWELL SIMON & COMPANY,
Mills Building,
220 Montgomery Street,
San Francisco.

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

April

8th

1925.

Mr. G. A. Johnson,
Chualar, Calif.

Dear Mr. Johnson:

We are enclosing you our special report on the Di Giorgio Corporation, at your request.

We are frank to assure you that the present market price of your stock is low in comparison to the price you paid for it. Yet, the company's general condition is improving so rapidly, as is indicated by our report, that we believe if you hold on to this security, you will come out in the end in quite a satisfactory fashion. [9]

We would suggest that in future, however, you confine your purchases to listed stocks such as Standard Oil of California, which not only has a ready immediate market, but always pays dividends and increases steadily in value.

You will see from the report that had you invested \$100 in Standard Oil of California some twelve years ago, your investment today would be worth around \$1008 and you would have received \$272 dividends.

To enable you to acquire such worth while holdings as Standard Oil of California, we should be glad to make you a loan on your Di Giorgia holdings, or to use them as collateral on the purchase of a block of Standard Oil of California. Thus, you will be able to receive the dividends from both the Di Giorgio and the Standard Oil of California and should find such a purchase a very profitable one.

If we can do anything for you, please call upon us.

Very truly yours,

CROMWELL SIMON & COMPANY.

(Signed) ORTON E. GOODWIN.

OEG/H. [10]

COUNT TWO.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about April 22, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mr. Gustave A. Johnson, P. O. Box 53, Chaular, California, which said envelope then and there contained and had enclosed therein the following:

- (a) A certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "A," and by

this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein. [11]

- (b) A certain document entitled "Cromwell Simon & Company, Certificate," the face thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "B" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein; and the back thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "C" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein.
- (c) A certain document entitled "The Cromwell Simon & Company Plan" of the following tenor, to wit, the face thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "D" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein; and the back thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "E" and by this reference incorpo-

rated herein and made a part hereof with like effect for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT THREE.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present as follows: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in [12] the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about July 7, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by

the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mr. G. A. Johnson, P. O. Box 53, Chaular, Calif., which said envelope then and there contained and had enclosed therein a certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "F," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT FOUR.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present as follows: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this [13] indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said

scheme and artifice to defraud, did, on or about July 13, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Gustave A. Johnson, P. O. Box 53, Chualar, Calif., which said envelope then and there contained and had enclosed therein a card in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "G" and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided. [14]

COUNT FIVE.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL M. KASSMIR, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, represen-

tations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about October 29, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States a certain postpaid envelope addressed to Mr. Gustave A. Johnson, P. O. Box 53, Chualar, California, which said envelope then and there contained and had enclosed therein the following:

- (a) A certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked "H," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth [15] in full herein.
- (b) A certain document entitled "PAYMENT NOTICE" of the following tenor, to wit, being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "I" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT SIX.

And the Grand Jurors on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about May 13, 1926, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and [16] feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain envelope addressed to Mr. J. A. Bardin, Attorney-at-law, Salinas, California, which said envelope then and

there contained and had enclosed therein a letter addressed to Mr. J. A. Bardin, Attorney-at-law, Salinas, California, in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "J" and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT SEVEN.

And the Grand Jurors on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully [17] and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about June 24, 1925, in the Southern Division of the Northern Dis-

trict of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mr. S. Tiger, 1826 Anza St., San Francisco, Calif., which said envelope then and there contained and had enclosed therein the following:

- (a) A certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "K," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.
- (b) A certain document entitled "Special Report on Dodge Brothers, Inc.," the first page thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "L" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein; and the second page thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "M" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided. [18]

COUNT EIGHT.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN, and J. W. RANDOLPH, the identical parties named in the first count of this indictment hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifices to defraud, did, on or about June 30, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States a certain postpaid envelope addressed to Mrs. Annie G. Tiger, 1828 Anza Street, San Francisco, which said envelope then and there

contained and had enclosed therein a letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "N," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein. [19]

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT NINE.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about July 2d, 1926, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously

place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mrs. Annie G. Tiger, 1828 Anza Street, San Francisco, which said envelope then and there contained and had enclosed a certain letter in words and figures shown by the [20] photostatic copy thereof attached hereto and marked Exhibit "O," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT TEN.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though

the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about September 5, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and caused to be placed in the United States postoffice at San Francisco, California, to be [21] sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mrs. Annie G. Tiger, 1828 Anza Street, San Francisco, Calif., which said envelope then and there contained and had enclosed therein the following:

- (a) A certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "P," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.
- (b) A certain document entitled "Cromwell Simon & Company Certificate," the face thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "Q," and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein; and the back thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and

marked Exhibit "R" and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT ELEVEN.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and [22] for obtaining money and property under the false and fraudulent, pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about May 14, 1926, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the

Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mrs. Anna Tiger, 1828 Anza St., Apt. 3, San Francisco, California, which said envelope then and there contained and had enclosed therein a certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "S," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT TWELVE.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN, and J. W. RANDOLPH, [23] the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to

defraud, did, on or about April 1, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mr. Ernest C. Hipp, 543 Monroe, Santa Clara, Calif., which said envelope then and there contained and had enclosed therein the following:

- (a) A certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "T," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein. [24]
- (b) A certain document entitled "The Crowsell Simon & Company Plan" of the following tenor, to wit, the face thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "U" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein; and the back thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "V" and by this reference incorporated herein and made a part hereof

with like effect for all purposes as though set forth in full herein.

- (c) A certain document entitled "Cromwell Simon & Company Certificate," the face thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "W" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein; and the back thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "X" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT THIRTEEN.

And the Grand Jurors on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses,

representations and promises described [25] in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about March 31, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain envelope addressed to Mr. Ernest Hipp, 543 Monroe St., Santa Clara, which said envelope then and there contained and had enclosed therein a certain receipt in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "Y," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT FOURTEEN.

And the Grand Jurors on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROB-

INSON, ORTON E. GOODWIN and J. W. RANDOLPH, [26] the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about April 6, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mr. Ernest Hipp, 543 *Monroe, Santa Clara, Calif.*, which said envelope then and there contained and had enclosed therein a certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "Z," and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the

statute of the said United States of America in such case made and provided. [27]

COUNT FIFTEEN.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about June 29, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mr. Ernest Hipp, 543 Monroe St., Santa Clara, Calif., which said envelope then and there contained and had enclosed therein a certain letter in words and figures shown by the photostatic copy

thereof attached hereto and marked Exhibit "AA" and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein. [28]

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT SIXTEEN.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about April 23, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and de-

livered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mrs. B. M. Ogier, 1696 Green Street, San Francisco, Cal., [29] which said envelope then and there contained and had enclosed therein a certain letter in words and figures shown by the photo-static copy thereof attached hereto and marked Exhibit "BB" and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT SEVENTEEN.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to

defraud, did, on or about June 13, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United [30] States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mrs. B. M. Ogier, 1696 Green Street, San Francisco, Calif., which said envelope then and there contained and had enclosed therein a certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "CC" and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT EIGHTEEN.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in

the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of [31] executing said scheme and artifice to defraud, did, on or about October 9, 1925, unlawfully, wilfully and feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at San Francisco, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Miss Clara Oliver, 1696 Green St., San Francisco, California, which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "DD" is by *by* this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT NINETEEN.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first

count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully [32] and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about October 29, 1925, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at San Francisco, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Miss Clara Oliver, 1696 Green Street, San Francisco, Calif., which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "EE," is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT TWENTY.

And the Grand Jurors on their oaths aforesaid

do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described [33] in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about March 15, 1926, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at San Francisco, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Miss Clara Oliver, 1696 Green St., San Francisco, Calif., which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "FF" is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the

statute of the said United States of America in such case made and provided.

COUNT TWENTY-ONE.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this [34] indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about May 5, 1926, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at San Francisco, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Miss Clara Oliver, 1696 Green St., San Francisco, Cal., which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "GG" is by this

reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided. [35]

COUNT TWENTY-TWO.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about September 11, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establish-

ment of the United States, a certain postpaid envelope addressed to Mr. W. F. Allen, 1717 Ellis St, San Francisco, which said envelope then and there contained and had enclosed a certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "HH" and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein. [36]

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT TWENTY-THREE.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about September 16, 1925, in

the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly, and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Mr. W. F. Allen, 1717 Ellis St., San Francisco, which said envelope then and there contained a certain letter in words [37] and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "II" and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT TWENTY-FOUR.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning

which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about November 4, 1925, unlawfully, wilfully, knowingly and feloniously cause to be delivered by the Postoffice Establishment of the United States, at San Francisco, California, in the Southern Division of the Northern District [38] of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Mr. W. F. Allen, 1717 Ellis Street, San Francisco, Calif., which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "JJ" is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT TWENTY-FIVE.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants,

so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or [39] on October 13, 1925, unlawfully, wilfully, knowingly and feloniously cause to be delivered by the Postoffice Establishment of the United States, at Oakland, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope, addressed to Miss Mary Esther Durham, 5838 Birth Court, Oakland, California, which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "KK" is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT TWENTY-SIX.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASS-

MIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby [40] incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about October 28, 1925, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at Oakland, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Miss Mary Esther Durham, 5838 Birch Court, Oakland, Calif., which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "LL" is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the

statute of the said United States of America in such case made and provided.

COUNT TWENTY-SEVEN.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having [41] devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about February 2, 1926, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at Oakland, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Miss Mary Esther Durham, 5838 Birch Court, Oakland, California, which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "MM"

is by the reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT TWENTY-EIGHT.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, [42] the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully, and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about February 19, 1926, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at Oakland, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in

a postpaid envelope addressed to Miss Mary Esther Durham, 5838 Birch Court, Oakland, California, which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "NN" is by reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided. [43]

COUNT TWENTY-NINE.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about March 15, 1926, unlawfully, wilfully, feloniously and knowingly cause

to be delivered by the Postoffice Establishment of the United States, at Oakland, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Miss Mary Esther Durham, 5838 Birch Court, Oakland, California, which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "OO" is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein. [44]

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT THIRTY.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as

fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about June 26, 1926, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at Oakland, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Mrs. Emily A. Beans, 5838 Birch Court, Oakland, Calif., which said letter in words and figures shown by the photostatic copy thereof [45] attached hereto and marked Exhibit "PP" is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT THIRTY-ONE.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money

and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about July 7, 1926, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at Oakland, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter [46] enclosed in a postpaid envelope addressed to Miss Mary Esther Durham, 5838 Birch Court, Oakland, Calif., which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "QQ" is by this reference incorporated herein and made a part thereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT THIRTY-TWO.

And the Grand Jurors on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROB-

INSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice, to defraud, did, on or about March 8, 1927, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice [47] Establishment of the United States, at Oakland, California, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, according to the direction thereon, the following:

- (a) A certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "RR" and by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.
- (b) A carbon copy of a letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "SS," and by this reference incorporated herein and made a part hereof with like effect and

for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT THIRTY-THREE.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby [48] incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about March 8, 1927, unlawfully, wilfully, feloniously and knowingly cause to be delivered by the Postoffice Establishment of the United States, at Oakland, California, in the Southern Division of the Northern District of California and within the jurisdiction of this court, according to the direction thereon, a certain letter enclosed in a postpaid envelope addressed to Mr. John J. Allen, Jr., Attorney at Law,

902 Syndicate Bldg., Oakland, Calif., which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "TT" is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT THIRTY-FOUR.

And the Grand Jurors on their oaths aforesaid do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN, and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described [49] in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about May 16, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and

feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid circular addressed to Phil A. Nagen, 3126 Clay, City, the fact thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "UU" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein; and the back thereof being in the words and figures as shown by the photostatic copy thereof attached hereto and marked Exhibit "VV" and by this reference incorporated herein and made a part hereof with like effect for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

COUNT THIRTY-FIVE.

And the Grand Jurors on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, [50] the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the al-

legations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about July 25, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain envelope addressed to Mr. Leroy F. Pike, City Attorney, Reno, Nevada, which said envelope then and there contained and had enclosed therein a certain two-page letter, which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibits "WW" and "XX" is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided. [51]

COUNT THIRTY-SIX.

And the Grand Jurors on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first

count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about August 26, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to LeRoy F. Pike Esq., Attorney-at-law, City Hall, Reno, Nevada, which said envelope then and there contained and had enclosed a certain two-page letter, which said letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibits "YY" and "ZZ" is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in [52]

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made ad provided.

COUNT THIRTY-SEVEN.

And the Grand Jurors on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of this indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about August 31, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States post-office at San Francisco, California, to be sent and delivered by the Postoffice Establishment of the United States, a certain postpaid envelope addressed to Leroy F. Pike, Esq., Attorney-at-law, Reno, Nevada, which said envelope then and there contained and had enclosed therein a certain letter, which said letter in words [53] and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "AAA" is by this refer-

ence incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made ad provided.

COUNT THIRTY-EIGHT.

And the Grand Jurors on their oaths aforesaid, do further present: THAT HARRY M. KASSMIR, CROMWELL SIMON, SAMUEL H. ROBINSON, ORTON E. GOODWIN and J. W. RANDOLPH, the identical parties named in the first count of the indictment, hereinafter called the defendants, so having devised the aforesaid scheme and artifice to defraud and for obtaining money and property under the false and fraudulent pretenses, representations and promises described in the first count of this indictment, the allegations concerning which in said first count are hereby incorporated by reference thereto in this count as fully and with like effect for all purposes as though the same were here reiterated and repeated, for the purpose of executing said scheme and artifice to defraud, did, on or about September 18, 1925, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, unlawfully, wilfully, knowingly and feloniously place and cause to be placed in the United States postoffice at San Francisco, California, to be [54] sent and delivered by the Postoffice Establishment of the United States a certain postpaid envelope

addressed to LeRoy F. Pike, Esq., Attorney-at-law, City Hall, Reno, Nevada, which said envelope contained a certain letter in words and figures shown by the photostatic copy thereof attached hereto and marked Exhibit "BBB" and which said letter is by this reference incorporated herein and made a part hereof with like effect and for all purposes as though set forth in full herein.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

GEO. J. HATFIELD,
United States Attorney.

[Endorsed]: A true bill.

W. A. BECHTEL,
Foreman Grand Jury.

Presented in open court and ordered filed Feb.
21, 1928. [55]

EXHIBIT "A."

CROMWELL SIMON & COMPANY

Mills Building

220 Montgomery Street

San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

April

22nd

1925

Mr. Gustave A. Johnson,

P. O. Box 53,

Chualar, California.

Dear Mr. Johnson:

We are very pleased to welcome you as a client of our organization and you will find enclosed our certificate covering your purchase of twenty shares of Standard Oil of California stock.

We acknowledge receipt of the following collateral to apply on the above partial payment account:—8 Di Giorgio Fruit Corporation units.

We shall always be pleased to serve you and you may call on us at any time for any information regarding securities of any kind concerning which you desire information.

We particularly ask that you bring to our attention any item or part of your transaction that is not

entirely clear or satisfactory, because it is our wish to have satisfied clients exclusively. We draw to your attention the enclosed pamphlet, entitled the Cromwell Simon & Company Plan, which gives you complete details of our method for the acquisition of high-grade securities on a partial payment basis.

Will you be good enough to carefully review the figures on your certificate of purchase because we shall be governed entirely by these figures and your purchase agreement.

We trust to have the pleasure of serving you again in the near future.

Very truly yours,

CROMWELL SIMON & COMPANY

ORTON E. GOODWIN

OEG:W. [56]

EXHIBIT "B."

CROMWELL SIMON & COMPANY

CERTIFICATE

THIS IS TO CERTIFY, that CROMWELL SIMON & COMPANY has this 20th day of April 1925, agreed to sell and deliver to Gustave A. Johnson, the following named securities:

20 Shares of S. O. of Calif. Stock @ \$58.50 per share, Total \$1170.00, upon which \$234.00 has been paid leaving a balance, including service charge, of \$1029.60.

.....Shares ofStock @ \$...... per share, Total \$....., upon which \$..... has been paid leaving a balance, including service charge, of \$.....

.....Shares of Stock @ \$...... per share, Total \$....., upon which \$..... has been paid leaving a balance, including service charge, of \$.....,

on THE CROMWELL SIMON & COMPANY PLAN in conformity with terms and conditions contained in agreement this day executed which calls for completion of payment of said balance for the above mentioned securities in ten (10) installments of \$102.96 each, together with interest from the above date on deferred payments at 6%, each installment to come due every ninety (90) days from above date.

IT IS FURTHER AGREED, that Gustave A. Johnson may at his option complete payment at an earlier date.

CROMWELL SIMON & COMPANY,

By V. A. PARKS

This certificate to be surrendered upon delivery of securities mentioned or cancellation of contract.

[57]

EXHIBIT "C."

[Reverse side of Certificate—Cromwell Simon & Company.] [58]

EXHIBIT "D."

THE CROMWELL SIMON & COMPANY PLAN.

The Cromwell Simon & Company plan is a method for the acquisition by easy payments, of high grade securities, listed on the New York Making Good Stock Exchange. Fortunes have been Investments lost by investors in promoted enterprises and many strong boxes are filled with certificates representing ownership in worthless securities.

By means of the Cromwell Simon & Company plan, high grade dividend paying securities of the greatest and most successful corporations of the country may be acquired on the basis of one-fifth down and the balance in ten equal quarterly payments.

After the first payment, your account is credited with all dividends, cash or stock, that are declared on the stocks you are acquiring.

The plan enables you to control five times the stock you could purchase for cash—thereby giving five times the profit possibilities.

Thus if you should have \$500, you could buy only 10 shares of stock at \$50 a share, but with the Cromwell Simon & Company plan, you Easy could buy 50 shares. So that if Payment Plan your Stock should go to \$80 a share, instead of making \$300, you would make \$1500, less the service charge.

For Example:

Buy 10 shares at \$50.....	\$500.00
Initial payment.....	100.00
	<hr/>
Balance due.....	\$400.00
Service charge one-tenth of unpaid bal-	
ance	40.00
	<hr/>
Total	\$440.00
10 payments due every three months.....	\$ 44.00

The initial deposit required on listed stocks and bonds is one-fifth of the total purchase price. Balance is payable in equal installments in Initial 30, 60 or 90 days. We charge 6 per cent Deposit bank interest on deferred balance, which is usually offset—often more than offset—by credit for dividends.

How to Own \$60,000

If a man of thirty will buy \$100 monthly, or \$1,200 a year, of standard investments and continue to reinvest the income of say 8% average a year, together with his \$100 monthly, he should be able to retire with \$60,000 in securities and \$300 to \$400 or more monthly income, according to the interest rate, when he is fifty. This is three times the amount saved each month during the twenty years.

This tabulation makes no provisions for enhanced valuation of securities which could conceivably double or treble the principal. Had investment been made in leading oil stocks, such as are recommended by CROMWELL SIMON & COMPANY, this result could have been achieved.

We do not desire you to overbuy. Make your payments conform with your expected savings. Start by buying good securities now.

You may order us to sell all or any part of your holdings at any time.

You may pay up balance at any time, when we shall deliver to you your securities.

As an alternative, good stocks or bonds may be used as collateral for the initial or any subsequent payment, in which event the dividends, both on the securities used as collateral and owned by you, and those being purchased through us, go to the buyer's account.

We guarantee that regardless of the fluctuations and price of the securities, bought on the Cromwell Simon & Company plan of easy Our payments, that under no conditions Guarantee whatsoever will we call for any money except the regular payments at the specified time. Under no circumstances will any margin calls be made on the purchaser.

For our service charge we charge no commissions either for buying or selling, but a flat charge of one-tenth of the unpaid balance which covers the Our guarantee, carrying charges, brokerage com- Fee missions for buying and selling, transfer taxes and the complete service of Cromwell Simon & Company. The service charge is added to the unpaid balance and is included in the monthly payments.

As soon as the initial payment is made, we issue to you our formal certificate of purchase, which shows the securities contracted for and the payments required thereon.

When you make final payment on securities, you will then notify us of the name in full Transfer and the address of the person to Instructions whom you want the securities issued and actual delivery of the stock will be made as soon as received from the transfer office.

If You Now Own Securities

If the investor already owns sound securities (we will be glad to give them a rating on request), they can be used to secure the purchase of additional sound securities. By depositing these with CROMWELL SIMON & COMPANY as security, they take the place, up to their full loan value, of the initial or (and) subsequent payment required on the new purchases, and the balance can be paid on the CROMWELL SIMON & COMPANY Plan, namely, by ten consecutive quarterly installments.

The owner of securities can, without incurring any obligation whatever and without expense, merely give us a list of his present holdings, and we will gladly inform him not only of the present value of same, but also what other investments we would suggest buying in addition, and what quantity and value in new investments his "collateral" will cover.

EXHIBIT "E."

Leading Features
of the

CROMWELL SIMON & CO.

Investment Plan

Available to investors small and large, the following privileges mark the Cromwell Simon & Company Investment Plan as a safe and sound method of acquiring nationally known securities which are listed on the New York Stock Exchange, in America's leading corporations.

- 1 The purchase of sound securities with a nominal deposit and ten installments every three months, at prevailing market prices.
- 2 No other liability, premiums, or payments beyond the initial and quarterly payments, with interest at 6 per cent on deferred balance.
- 3 No margin calls.
- 4 Diversified investments.
- 5 Complete control of the account by the investor.
- 6 Participation in all dividends or stock distributions while paying off the balance, from the time they are bought.
- 7 Privilege to use securities in place of cash for initial or subsequent payments.
- 8 Larger payments or payment in full accepted any time.

9 When additional securities are purchased, quarterly installments on the entire account may be renewed for the full 10-payment period, if client so desires.

10 Paid-in payments may after a time be used as initial payment on additional investments.

11 Securities, any time paid for, immediately delivered in accordance with customer's instructions.

12 Completely satisfactory individual service.

13 Service charge that does not vary; *i. e.* one-tenth of unpaid balance.

The

CROMWELL SIMON & CO.

Investment Plan

Announcing a service for the sale to clients, on a partial payment basis, of gilt-edge investment securities, listed on the New York Stock Exchange.

CROMWELL SIMON & CO.

Private Exchange

Telephone Kearny 6940

Suite 210-224 Mills Building

220 Montgomery Street

San Francisco. [60]

EXHIBIT "F."

CROMWELL SIMON & COMPANY

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone
Kearny 6940

July

7th,

1925.

Mr. G. A. Johnson,
P. O. Box 53,
Chualar, Calif.

My dear Friend Gus—

Your letter of June 24th, addressed to Mr. William Wallace, has been brought to my attention. I believe the questions you ask in this letter were answered in mine of a few days ago to you.

I wish to again assure you that your transaction with Cromwell Simon & Company will be of financial benefit beyond any question.

Should you at any time wish information regarding your investment or our standing, please communicate with me.

Hoping that I may again have the pleasure of

serving you to the extent that your capital will be materially increased, I am

Sincerely yours,
J. W. RANDOLPH.

JWR:R. [61]

EXHIBIT "G."

Private Exchange	220 Montgomery St.
Kearny 6940	San Francisco, Calif.
	Jul. 13, 19

Gustave A. Johnson,
P. O. Box 53
Chualar, Calif.

You are hereby notified that a payment of \$102.96 on your purchase of 20 shares of Stand. Oil of Calif. stock will be due and payable to the undersigned on July 20, 1925.

CROMWELL SIMON & COMPANY

Accounting Department

Payment Due.....\$102.96

Interest\$ 18.95

Total\$121.91

Less Dividends....\$ 10.

Amount Due.....\$111.91 [62]

EXHIBIT "H."

CROMWELL SIMON & COMPANY

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

October

twenty-ninth

1925

Mr. Gustave A. Johnson,
P. O. Box 53,
Chualar, Calif.

Dear Mr. Johnson:

Your letter of October 26th addressed to Mr. Randolph has been given to me with a request that I reply to it.

Due to the fact that a statement showing payment due on your Standard Oil of California account was not properly addressed, it was returned by the Post Office authorities, and consequently, an unavoidable delay occurred. A second statement was mailed to you a few days ago which we feel confident is in your possession.

It is true that most of the substantial companies' stocks have been rather quiet market-wise, nevertheless we feel that the improvement in the oil industry will be reflected in the market price

of stocks such as you hold, in the not too distant future. Upon completion of the payments your contract calls for stock certificates which will be delivered to you.

We do not have such additional information regarding the Di Giorgio Fruit Corporation stock that you undoubtedly desire, with the exception that the market value of this stock has increased to quite some extent during the last few months. As soon as an earning statement can be had, we should be glad to send you a special report.

Yours very truly,
CROMWELL SIMON & COMPANY,
By HARRY KASSMIR.

HK/ [63]

EXHIBIT "I."

CROMWELL SIMON & COMPANY.

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

(Copy)

PAYMENT NOTICE

Gustave A. Johnson,
Chualar, Calif.

A payment of \$102.96 will come due on your pur-

chase of 20 shares of Standard Oil of California stock on October 20, 1925.

Payment \$102.96 .

Interest 17.41

120.37

Dividends 10.00

110.37

CROMWELL SIMON & COMPANY,
1403 Hobart Building,
San Francisco. [64]

EXHIBIT "J."

CROMWELL SIMON & COMPANY

~~Mills Building~~

~~220 Montgomery Street~~

San Francisco

1403 Hobart Bldg.

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

May

thirteenth

1926

Mr. J. A. Bardin,

Attorney-at-law,

Salinas, California.

Dear Sir:

The following is an itemized account of Gustav A. Johnson with Cromwell Simon & Company:

DEBITS:

1925		
Apr. 20	20 Standard Oil of Calif. @ 58½	\$1170.00
" "	Service charge	93.60
" "	8 Di Georgia Fruit Units Rec'd	
" "	Interest	18.95
Oct. 20	Interest	17.41
1926		
May 5	Interest	37.31
		<hr/>
		1337.21

CREDITS:

1925		
June 15	Div. S. C. D.	\$ 10.00
July 20	Check	111.91
Sept. 15	Div.	10.00
Dec. 15	Div.	10.00
1926		
Mar. 15	Div.	10.00
		<hr/>
		151.91

Long: 20 Standard Oil of Calif.;
8 Units Di Georgia Fruit.

If you will apprise me when you desire to liquidate this account, we will advise you where to send the balance due in order to receive delivery of your 20 shares of Standard Oil and 8 Units of Di Georgia Fruit Co.

Very truly yours,
CROMWELL SIMON & COMPANY.
By HARRY M. KASSMIR.

EXHIBIT "K."

CROMWELL SIMON & COMPANY

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

June 24th, 1925.

Mr. S. Tiger,
1828 Anza St.,
San Francisco, Calif.

Dear Mr. Tiger:

Thank you for your inquiry concerning Dodge Motors.

The enclosed report will give you very complete information concerning the Company.

You can unquestionably consider the preferred stock as a gilt-edge dividend-paying investment, and the common stock as an investment for profits of the highest order.

We believe that both the common and preferred stock will be selling at much higher prices, particularly the common.

You may purchase through us either or both of these issues on the basis of one-fifth down and the balance in ten subsequent payments, ninety days apart.

We shall be very glad to welcome you as one of our clients, and believe you cannot possibly do better than accumulate a few shares of Dodge, either for investment or profit.

Purchases at the present time should net you large profits within the near future.

Very truly yours,
 CROMWELL SIMON & COMPANY.
 ORTON E. GOODWIN.

OEG/B. [66]

EXHIBIT "L."
 SPECIAL REPORT
 on
 DODGE BROTHERS, INC.
 Capital Stock

	Authorized	Outstanding
\$7.00 cum. Preferred		
(no par).....	850,000 sh.	850,000 sh.
Class "A" Common		
(no par).....	*2,535,000 sh.	1,500,000 sh.
Class "B" Common		
(no par).....	500,000 sh.	500,000 sh.

Class "A" and Class "B" Common Stock are identical in all respects, except that Class "A" has no voting power and Class "B" has exclusive voting power.

*Of which 689,285 shares reserved for conversion of 6% Gold Debentures.

FUNDED DEBT.

Convertible Gold Debentures, 6% \$75,000,000.

GENERAL.

The Company is the third largest manufacturer of automobiles in the world. It is also a large producer of trucks.

In 1914, production of cars was 349, and since that time nearly 1,300,000 cars have been produced. In 1924 the Company sold 222,236 cars, or a sales value of \$191,652,446. The Company is a new organization, having acquired all the assets (except \$14,000,000. cash) of the old Dodge Brothers Company, the stock of which was not listed on the New York Stock Exchange. The new company of Dodge Brothers, Inc., was organized April 8, 1925, and has not as yet inaugurated dividend payments. Dividends at the rate of \$7.00 a share, or an approximate yield of 9%, will be paid quarterly on the preferred stock. No announcement has yet been made regarding dividends on the common stock.

Both the preferred stock and the common stock can be considered to hold an exceptional market opportunity.

The stock was originally offered in units of one share preferred and one of common at \$100.00, and was over-subscribed ten times over.

The stock has now been segregated and both the preferred and common stock are listed on the New York Stock Exchange. The preferred stock is not only a gilt-edge investment, but may be considered

to have exceptional opportunities for an increase in price.

Evidence of the expectations of the Board of Directors of Dodge Brothers, Inc., regarding the Common stock may be indicated by the arrangements made to convert the debentures into "A" stock. These arrangements are on a sliding scale, as follows:—

For the first \$5,000,000 debentures converted, 1 share of com. "A" stock for each \$30 of debentures.

For the second \$5,000,000 debentures converted, 1 share of com. "A" stock for each \$35 of debentures.

For the third \$5,000,000 debentures converted, 1 share of com. "A" stock for each \$40 of debentures.

For the fourth \$5,000,000 debentures converted, 1 share of com. "A" stock for each \$50 of debentures.

For the fifth \$5,000,000 debentures converted, 1 share of com. "A" stock for each \$60 of debentures.

For the sixth \$5,000,000 debentures converted, 1 share of com. "A" stock for each \$70 of debentures.

The "B" stock is not for sale.

The old Dodge Company paid 160% in dividends in 1921, 60% dividends in 1922, no dividends in 1923, 14% in 1924 and 12% in 1925. In addition it paid a 400% stock dividend in 1922.

CROMWELL SIMON & COMPANY

210-223-224-224A Mills Bldg.

220 Montgomery Street

San Francisco

Dealers in

High Grade Investment Securities

All Standard Oil Stocks

Kearny 6940

Unlisted Stocks

Private Exchange

Bonds

The statements presented in this circular while not guaranteed, have been taken from sources which we believe to be reliable. [67]

EXHIBIT "M."

2.

PROFITS.

After allowing for interest on the debentures and \$7.00 per share on the preferred stock, present earnings are running at the rate of \$7.00 per share on the common stock.

It is estimated by President Haynes that the first six months' earnings for 1925 will be over \$14,000,000 as against nearly \$20,000,000 for the full year of 1924.

Earnings of \$14,000,000 for the first six months would be sufficient to cover:—

- (1) A full year's interest and sinking fund on \$75,000,000 worth of debentures.
- (2) A full year's dividends at \$7.00 per share on the preferred stock.
- (3) And leave almost \$2,500,000 over.

This would indicate that the second six months' earnings, together with the \$2,500,000 for the first six months, would be available for dividends on the common stock.

Based on the new capitalization, in 1924 the Company earned \$18.19 per share on its preferred stock, \$4.76 per share on the common stock and earned its interest and preferred stock dividends nearly twice over.

Although the Company is operating at the rate of 1100 cars a day, this is said to be 200 a day behind the orders received.

RECOMMENDATIONS.

Based on the foregoing facts and figures, we can unquestionably recommend Dodge Brothers, Inc., both preferred and common stocks, as an investment of the highest order. The preferred stock may be considered a dividend-paying stock of the highest order, while the common stock should be bought and accumulated both for market profit and future dividends.

CROMWELL SIMON & COMPANY

210-223-224-224A Mills Bldg

220 Montgomery Street

San Francisco

Dealers in

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Private Exchange

Bonds

Kearny 6940

The statements presented in this circular while not guaranteed, have been taken from sources which we believe to be reliable. [68]

EXHIBIT "N."

CROMWELL SIMON & COMPANY

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities Telephone
All Standard Oil Stocks Kearny 6940
Unlisted Stocks
Bonds

June
30th,
1925.

Mrs. Annie G. Tiger,
1828 Anza Street,
San Francisco.

Dear Mrs. Tiger:—

Thank you for your order of 100 shares of Dodge Brothers Class "A" stock, accompanied by deposit of \$25.00.

We shall have very much pleasure in sending you our formal Certificate of Purchase on this account as soon as the balance of the initial payment is made.

In our opinion, you have made a very wise selection in Dodge "A," as we know of no security on the New York Stock Exchange which has such an immediately bright prospect before it as has the

stock of the amazing Dodge Brothers, now the third largest automobile manufacturers in the world.

Very truly yours,

CROMWELL SIMON & COMPANY.

ORTON E. GOODWIN.

OEG:R. [69]

EXHIBIT "O."

CROMWELL SIMON & COMPANY

Mills Building

220 Montgomery Street

San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

July

2nd,

1925.

Mrs. Annie G. Tiger,
1828 Anza Street,
San Francisco.

Dear Mrs. Tiger:—

We are very pleased to welcome you as a client of our organization, and you will find enclosed our Certificate covering your purchase of 100 shares of Dodge "A" stock.

We shall always be pleased to serve you and you may call on us at any time for any information you may desire regarding securities of any kind.

We particularly ask that you bring to our attention any item or part of your transaction that is not entirely clear or satisfactory, because it is our wish to have satisfied clients exclusively. We draw to your attention the enclosed pamphlet, entitled **THE CROMWELL SIMON & COMPANY INVESTMENT PLAN**, which gives you complete information regarding our method for the acquisition of high-grade securities on a partial payment basis.

Will you be good enough to carefully review the figures on your Certificate of Purchase because we shall be governed entirely by these figures and your Purchase Agreement.

We trust to have the pleasure of serving you again in the near future.

Very truly yours,

CROMWELL SIMON & COMPANY.

ORTON E. GOODWIN.

OEG:R. [70]

EXHIBIT "P."

CROMWELL SIMON & COMPANY

Mills Building

220 Montgomery Street

San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Telephone

Unlisted Stocks

Kearny 6940

Bonds

September

5th,

1925.

Mrs. Annie G. Tiger,
1828 Anza Street,
San Francisco, Calif.

Dear Mrs. Tiger:—

We are pleased to enclose herewith our Certificate covering your purchase of fifty shares of Standard Oil of California stock.

We particularly ask that you bring to our attention any item or part of your transaction that is not entirely clear or satisfactory, because it is our wish to have satisfied clients exclusively.

Trusting that we may have the pleasure of serving you again in the near future, we are

Very truly yours,

CROMWELL SIMON & COMPANY.

J. W. RANDOLPH.

JWR:R. [71]

EXHIBIT "Q."

CROMWELL SIMON & COMPANY
CERTIFICATE

THIS IS TO CERTIFY that CROMWELL SIMON & COMPANY has this 5th day of September, 1925, agreed to sell and deliver to Annie G. Tiger the following named securities;

50 Shares of Standard Oil of Cal. Stock @ \$53- $\frac{3}{8}$ per share, Total \$2668.75 upon which \$530.00 has been paid leaving a balance, including service charge, of \$2352.63.

.....Shares of Stock @ \$...... per share, Total \$...... upon which \$...... has been paid leaving a balance, including service charge, of \$.....

..... Shares of Stock @ \$...... per share, Total \$...... upon which \$...... has been paid leaving a balance, including service charge, of \$.....

on THE CROMWELL SIMON & COMPANY PLAN in conformity with terms and conditions contained in agreement this day executed which calls for completion of payment of said balance for the above-mentioned securities in ten (10) installments of \$235.26 each, together with interest from the above date on deferred payments at 6%, each installment to come due every Ninety (90) days from above date.

IT IS FURTHER AGREED, that Annie G.
her

Tiger may at his option complete payment at an
earlier date.

CROMWELL SIMON & COMPANY.

By V. A. PARKS.

This certificate to be surrendered upon delivery
of securities mentioned or cancellation of contract.

[72]

EXHIBIT "R."

[Reverse side of certificate—Cromwell Simon &
Company.] [73]

EXHIBIT "S."

SAMUEL H. ROBINSON

Attorney at Law

Hobart Building

San Francisco

May
fourteenth
1926.

Mrs. Anna Tiger,
1828 Anza St., Apt. 2,
San Francisco,
California.

Dear Mrs. Tiger:

In accordance with my telephone conversation of
today, I am enclosing my personal check in the sum

88 *Samuel H. Robinson and J. W. Randolph*
of \$50.00 on behalf of partial settlement of your account with Cromwell Simon & Company.

Very truly yours,
SAMUEL H. ROBINSON.

SHR:MC.

1 Encl.

Received June 1, 1926. Office—Secy. State. [74]

EXHIBIT "T."

CROMWELL SIMON & COMPANY

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

April

First.

1925.

Mr. Ernest C. Hipp,
543 Monroe,
Santa Clara, Calif.

Dear Mr. Hipp:

We are very pleased to welcome you as a client of our organization and you will find enclosed our certificate covering your purchase of 40 shares of Standard Oil of California and 40 shares of Studebaker Corporation stock.

We acknowledge receipt of the following collateral to apply on the above partial payment account.—30 shares of Durant of California—35 shares of Durant of Delaware—and 20 shares of Hayes Hunt.

We shall always be pleased to serve you and you may call on us at any time for any information regarding securities of any kind concerning which you desire information.

We particularly ask that you bring to our attention any item or part of your transaction that is not entirely clear or satisfactory, because it is our wish to have satisfied clients exclusively. We draw to your attention the enclosed pamphlet, entitled the Cromwell Simon & Company Plan, which gives you complete details of our method for the acquisition of high-grade securities on a partial payment basis.

Will you be good enough to carefully review the figures on your certificate of purchase because we shall be governed entirely by these figures and your purchase agreement.

We trust to have the pleasure of serving you again in the near future.

Very truly yours,

CROMWELL SIMON & COMPANY.

E. HOFFMAN.

OEG./H. [75]

EXHIBIT "U."

THE CROMWELL SIMON & COMPANY PLAN.

The Cromwell Simon & Company plan is a method for the acquisition by easy payments, of high grade securities, listed on the New York Making Good Stock Exchange. Fortunes have Investments been lost by investors in promoted enterprises and many strong boxes are filled with certificates representing ownership in worthless securities.

By means of the Cromwell Simon & Company plan, high grade dividend paying securities of the greatest and most successful corporations of the country may be acquired on the basis of one-fifth down and the balance in ten equal quarterly payments.

After the first payment, your account is credited with all dividends, cash or stock, that are declared on the stocks you are acquiring.

The plan enables you to control five times the stock you could purchase for cash—thereby giving five times the profit possibilities.

Thus if you should have \$500, you could buy only 10 shares of stock at \$50 a share, but with the Cromwell Simon & Company plan, you Easy could buy 50 shares. So that if Payment Plan your stock should go to \$80 a share, instead of making \$300, you would make \$1500, less the service charge.

For Example:

Buy 10 shares at \$50.....	\$500.00
Initial payment.....	100.00

Balance due	\$400.00
-------------------	----------

Service charge one-tenth of unpaid balance.	40.00
---	-------

Total	\$140.00
-------------	----------

10 payments due every three months.....	\$ 44.00
---	----------

The initial deposit required on listed stocks and bonds is one-fifth of the total purchase price. Balance is payable in equal installments in Initial 30, 60 or 90 days. We charge 6 per cent Deposit bank interest on deferred balance, which is usually offset—often more than offset—by credit for dividends.

How to Own \$60,000.

If a man of thirty will buy \$100 monthly, or \$1,200 a year, of standard investments and continue to reinvest the income of say 8% average a year, together with his \$100 monthly, he should be able to retire with \$60,000 in securities and \$300 to \$400 or more monthly income, according to the interest rate, when he is fifty. This is three times the amount saved each month during the twenty years.

This tabulation makes no provisions for enhanced valuation of securities, which could conceivably double or treble the principal. Had investment been made in leading oil stocks, such as are recommended by CROMWELL SIMON & COMPANY, this result could have been achieved.

We do not desire you to overbuy. Make your payments conform with your expected savings. Start by buying good securities now.

You may order us to sell all or any part of your holdings at any time.

You may pay up balance at any time, when we shall deliver to you your securities.

As an alternative, good stocks or bonds may be used as collateral for the initial or any subsequent payment, in which event the dividends, both on the securities used as collateral and owned by you, and those being purchased through us, go to the buyer's account.

We guarantee that regardless of the fluctuations and price of the securities, bought on the Cromwell
Simon & Company plan of easy pay-
Our ments, that under no conditions what-
Guarantee soever will we call for any money ex-
 cept the regular payments at the speci-
fied time. Under no circumstances will any margin
calls be made on the purchaser.

For our service charge we charge no commissions either for buying or selling, but a flat charge of
 one-tenth of the unpaid balance which covers
Our the guarantee, carrying charges, brokerage
Fee commissions for buying and selling, transfer
 taxes and the complete service of CROM-
WELL SIMON & COMPANY. The service
charge is added to the unpaid balance and is in-
cluded in the monthly payments.

As soon as the initial payment is made, we issue to you our formal certificate of purchase, which shows the securities contracted for and the payments required thereon.

When you make final payment on securities, you will then notify us of the name in Transfer full and the address of the person to Instructions whom you want the securities issued and actual delivery of the stock will be made as soon as received from the transfer office.

If You Now Own Securities

If the investor already owns sound securities (we will be glad to give them a rating on request), they can be used to secure the purchase of additional sound securities. By depositing these with CROMWELL SIMON & COMPANY as security, they take the place, up to their full loan value of the initial or (and) subsequent payment required on the new purchases, and the balance can be paid on the CROMWELL SIMON & COMPANY Plan, namely, by ten consecutive quarterly installments.

The owner of securities can, without incurring any obligation whatever and without expense, merely give us a list of his present holdings, and we will gladly inform him not only of the present value of same, but also what other investments we would suggest buying in addition, and what quantity and value in new investments his "collateral" will cover.

EXHIBIT "V."

Leading Features
of the

CROMWELL SIMON & CO.

Investment Plan

Available to investors small and large, the following privileges mark the CROMWELL SIMON & COMPANY INVESTMENT PLAN as a safe and sound method of acquiring nationally known securities which are listed on the New York Stock Exchange, in America's leading corporations.

- 1 The purchase of sound securities with a nominal deposit and ten installments every three months, at prevailing market prices.
- 2 No other liability, premiums, or payments beyond the initial and quarterly payments, with interest at 6 per cent on deferred balance.
- 3 *No margin calls.*
- 4 Diversified investments.
- 5 Complete control of the account by the investor.
- 6 Participation in all dividends or stock distributions while paying off the balance, from the time they are bought.
- 7 Privilege to use securities in place of cash for initial or subsequent payments.
- 8 Larger payments or payment in full accepted any time.
- 9 When additional securities are purchased, quarterly installments on the entire account may be re-

newed for the full 10-payment period, if client so desires.

10 Paid-in payments may after a time be used as initial payment on additional investments.

11. *Securities, any time paid for, immediately delivered in accordance with customer's instructions.*

12 Completely satisfactory individual service.

13 Service charge that does not vary; *i. e.*, one-tenth of unpaid balance.

[In Ink:] Ernest Hipp.

The

CROMWELL SIMON & CO.

Investment Plan.

Announcing a service for the sale to clients, on a partial payment basis, of gilt-edge investment securities, listed on the New York Stock Exchange.

CROMWELL SIMON & CO.

Private Exchange

Telephone Kearny 6940.

Suite 210-224 Mills Building

220 Montgomery Street

San Francisco. [77]

EXHIBIT "W."

CROMWELL SIMON & COMPANY

CERTIFICATE

THIS IS TO CERTIFY, *that* CROMWELL SIMON & COMPANY has this 31st day of March,

1925, agreed to sell and deliver to Ernest Hipp, the following named securities:

40 Shares of Std. Oil of Calif. Stock @ \$59 $\frac{1}{4}$ per share, Total \$2370.00 upon ~~which~~ \$..... has been paid leaving a balance, including service charge, of \$.....

40 Shares of Studebaker Corp. Stock @ \$43 $\frac{1}{2}$ per share, Total \$1740.00, upon which \$822.00 has been paid leaving a balance, including service charge, of \$3616.80.

..... Shares of Stock @ per share, Total \$....., upon which \$..... has been paid leaving a balance, including service charge, of \$.....

on THE CROMWELL SIMON & COMPANY PLAN in conformity with terms and conditions contained in agreement this day executed which calls for completion of payment of said balance for the above mentioned securities in ten (10) installments of \$361.68 each, together with interest from the above date on deferred payments at 6%, each installment to come due every Ninety (90) days from above date.

IT IS FURTHER AGREED, that Ernest Hipp may at his option complete payment at an earlier date.

CROMWELL SIMON & COMPANY

By V. A. PARKS

This certificate to be surrendered upon delivery of securities mentioned or cancellation of contract.

EXHIBIT "X."

[Reverse side of certificate—Cromwell Simon & Company.] [79]

EXHIBIT "Y."

CROMWELL SIMON & COMPANY

Investment Securities

San Francisco

Mch. 31, 1925.

Mr. Ernest Hipp
543 Monroe St.
Santa Clara

We acknowledge receipt from you today of the following:

<i>Securities.</i>	<i>Check</i>	<i>Cash</i>
35 Durant of Delaware		
30 Durant of Calif.		
20 Hayes Hunt (common)		

which has been credited to your Collateral Buying account.

CROMWELL SIMON & COMPANY

By ORTON E. GOODWIN

Note: If cash purchase, we shall see that delivery of securities purchased is promptly made. [80]

EXHIBIT "Z."

CROMWELL SIMON & COMPANY

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

April

Sixth

1925.

Mr. Ernest Hipp,

543 Monroe,

Santa Clara, Calif.

Dear Mr. Hipp:

Thank you very much for drawing our attention to the mistake in your certificate. So far as I know, this is the first one that has ever been made in this office and I hope it will be the last.

I appreciate very much indeed your drawing this matter to our attention and am sending you corrected certificate. Will you be good enough to return the other one to us by registered mail.

The oil markets are getting stronger every day and I look for a very marked upward price in your Standard. Pacific Oil this morning jumped nearly two points and we look for Standard Oil to follow very speedily.

It was reported also that the Studebaker Corporation plans to increase its dividend this year, which should also make that stock sell materially higher. In any event, I think Studebaker absurdly cheap at the present market.

Again assuring you of our appreciation, we are,

Very truly yours,

CROMWELL SIMON & COMPANY

ORTON E. GOODWIN

OEG—H. [81]

EXHIBIT "AA."

CROMWELL SIMON & COMPANY

Mills Building

220 Montgomery Street

San Francisco

High Grade Investment Securities	Telephone
All Standard Oil Stocks	Kearny 6940
Unlisted Stocks	June
Bonds	29th
	1925.

Mr. Ernest Hipp,
543 Monroe St.,
Santa Clara, Calif.

Dear Mr. Hipp:—

We beg to acknowledge receipt of your payment of \$361.68.

Enclosed you will find statement covering your account in full, as per your request, dated up to July 1, 1925.

100 *Samuel H. Robinson and J. W. Randolph*

Trusting you will find this perfectly in order, we
are

Very truly yours,
CROMWELL SIMON & COMPANY
ORTON E. GOODWIN.

OEG:R. [82]

EXHIBIT "BB."

CROMWELL SIMON & COMPANY
Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities
All Standard Oil Stocks
Unlisted Stocks
Bonds

Telephone
Kearny 6940
April
25th
1925.

Mrs. B. M. Ogier,
1696 Green Street,
San Francisco, Cal.

Dear Mrs. Ogier:—

We want to thank you for your partial payment
account for 50 shares of Studebaker Corporation,
certificate for which is sent you herewith. We al-
ready feel that you and Miss Oliver are old clients
of our organization, and we assure you that every
effort will be made to give the best attention pos-
sible to your account.

You may be assured at all times that you will have the very best attention possible and our sole interest will be to see that your account is handled in a manner that will be productive of profit to you.

Very truly yours,

CROMWELL SIMON & COMPANY
ORTON E. GOODWIN.

OEG:R. [83]

[Envelope.]

[Stamped]: San Francisco, Calif. Apr. 25, 4 P. M., 1925. Let's Go! Citizens Military Training Camps.

[Two Cents U. S. Postage Stamp Attached.]

MRS. B. M. OGIER,
1696 Green Street,
San Francisco, Calif.

[On Reverse Side:]

Return to
Suite —0 Mills Building
220 Montgomery Street
San Francisco, California

~~97.50~~

9

1000

Hd 877.50

1000

Z 6.00

500

F 5.00

1

M 5.00

6.40

2600

3,117.50

2,477.50 [84]

EXHIBIT "CC."

CROMWELL SIMON & COMPANY

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

June

13th

1925.

Mrs. B. M. Ogier,
1696 Green Street,
San Francisco, Calif.

Dear Mrs. Ogier:—

We beg to acknowledge, with much appreciation, receipt of five shares of Pacific Oil stock, which has been credited to your account as collateral.

Very truly yours,

CROMWELL SIMON & COMPANY

ORTON E. GOODWIN.

OEG:R. [85]

EXHIBIT "DD."

CHARLES WESLEY COMPANY

Edwards & Wildey Bldg.
Sixth St. and Grand Ave.
Los Angeles

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks.

Bonds

Bell Telephone

Connections

October

Ninth,

1925.

Miss Clara Oliver,
1696 Green St.,

San Francisco, California.

Dear Miss Oliver:—

Enclosed you will find check for \$400.00. We are placing same against your account. As Mr. Parkes has been very busy it has been almost impossible to get your statement out to date, but I will forward same within the next day or two so that you can see just how your accounts stand.

I am taking care of the Dodge and Bond, as per our conversation.

Things here are coming along wonderfully well and everything points to a huge success, and I know that this information will make both yourself and Mrs. Ogier as happy as we are.

Jack wishes to be remembered to both yourself and Mrs. Ogier.

With my best wishes to you both, I am

Sincerely yours,
HARRY M. KASSMIR.

HMK :S.

We also entered & ordered Studebaker for you, will send Certificates along with your statement.
[86]

EXHIBIT "EE."

CHARLES WESLEY COMPANY

Edwards & Wildey Bldg.
Sixth St. and Grand Ave.
Los Angeles

High Grade Investment Securities

All Standard Oil Stocks	Bell Telephone
Unlisted Stocks	Connections
Bonds	

October 29, 1925.

Miss Clara Oliver,
1696 Green St.,
San Francisco, Calif.

Dear Miss Oliver:

This is to acknowledge receipt of your letter of October 24th and also advise that a check for dividends payable on the company's stock should be in your hands on Saturday of this week.

Due to the fact that all records of stock transactions are kept at the company office in Reno, it has

required quite some time to secure the necessary figures in order to pro rate the amounts of dividend checks.

Very shortly Harry will communicate with you, in all probability by telephone. Not knowing when he will be in San Francisco I cannot make a more definite statement. Please remember Harry and myself very kindly to Mr. Ogier and accept the best wishes of the organization for yourself.

Sincerely yours,

J. W. RANDOLPH.

JWR:BA. [87]

EXHIBIT "FF."

THOMAS ALLEN COMPANY
White-Henry-Stuart Building
Investment Securities
Seattle, Wash.

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Elliott 4520

March

15

1926

Miss Clara Oliver,

1696 Green St.,

San Francisco, Calif.

Dear Miss Oliver:

I know that you will pardon me for my neglect

in not writing and not sending you check as promised, but as things have been so that I have been unable to devote any time in the office I know you will overlook my neglect. I have been out of the city quite a good deal henceforth had to let matters of importance go.

I am enclosing check for \$102.50 which are the dividends on the 10 Armour A, 5 Pacific Oil, 10 Foster & Kliser and 50 Dodge Preferred.

We are coming along and the volume of business is increasing daily, and I believe that our success here is, almost an assured fact.

In reference to the dividends for the firm, I am writing Mr. Randolph at Los Angeles and will advise you on this later. With my best wishes to both Mrs. Ogier and yourself, I am as ever

Sincerely,

HARRY KASSMIR. [88]

EXHIBIT "GG."

THOMAS ALLEN COMPANY

White-Henry-Stuart Building

Investment Securities

Seattle, Wash.

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Elliott 4520

May

5

1926

Miss Clara Oliver,

1696 Green St.,

San Francisco, Cal.

Dear Miss Oliver:

Was indeed very glad to have received your letter of May 3rd., and was also glad that you received the check for \$25.00.

In reference to the check for the interest from Los Angeles, if you do not receive this within the next few days let me know how much the amount is and I will send you a check for it.

Hope that both yourself and Mrs. Ogier are enjoying the best of health. With my best wishes to you both, I am

Very Sincerely Yours,

HARRY KASSMIR. [89]

EXHIBIT "HH."

CROMWELL SIMON & COMPANY.

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Kearny 6940

September

11th,

1925.

Mr. W. F. Allen,
1717 Ellis St.,
San Francisco

Dear Mr. Allen:—

We wish to thank you for your order for fifty shares of Studebaker Stock, and you will find enclosed our certificate covering this purchase.

In this connection, we acknowledge receipt of fifty shares of Fageol Motors, to apply as collateral on this account.

Will you please be good enough to check your Certificate of Purchase carefully, and advise us immediately in the event there is any item which is not entirely clear to you or does not meet with your satisfaction?

Trusting that we may again be of service to you
in the near future, we are

Very truly yours,
CROMWELL SIMON & COMPANY
J. W. RANDOLPH.

JWR:R. [90]

EXHIBIT "II."

CROMWELL SIMON & COMPANY.

Mills Building
220 Montgomery Street
San Francisco

High Grade Investment Securities

All Standard Oil Stocks
Unlisted Stocks
Bonds

Telephone
Kearny 6940

September
16th,
1925.

Mr. W. F. Allen,
1717 Ellis St.,
San Francisco.

Dear Mr. Allen:—

Please find enclosed certificate covering your
purchase of 200 shares of Shell Union Oil Stock.

In this connection we acknowledge receipt of
150 shares of Fageol Motors stock to be used as
collateral on the above partial payment account.

Will you please make the usual check of this cer-

tificate, and advise us in the event of any discrepancy?

Assuring you that we are at your service at all times, and thanking you for the above purchase, we are

Very truly yours,
CROMWELL SIMON & COMPANY,
J. W. RANDOLPH.

JWR:R. [91]

EXHIBIT "JJ."

CHARLES WESLEY COMPANY,
Edwards & Wildey Bldg.
Sixth St. and Grand Ave.
Los Angeles.

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Bell Telephone

Connections

November 4, 1925.

Mr. W. F. Allen,

1717 Ellis St.,

San Francisco, Calif.

Dear Mr. Allen:—

In reply to your letter of November 2nd, please be advised that the down payment on your purchase agreement for twenty-five shares of Dodge Brothers Class A Common Stock dated October 14th was taken care of as follows: Two shares of Liberty National Bank to be used as collateral

upon which we allowed \$141.85, plus dividends due on Shell Union stock, amounting to \$70.00, making a total as noted above.

Hoping this answers your questions and with a desire to be of further service to you we are—

Very truly yours,
CHARLES WESLEY COMPANY,
J. W. RANDOLPH,
General Manager.

JWR.

FCM. [92]

EXHIBIT "KK."

CHARLES WESLEY COMPANY,
Edwards & Willey Bldg.
Sixth St. and Grand Ave.
Los Angeles.

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Bell Telephone
Connections

October
Thirteenth,
1925.

Miss Mary Esther Durham,
5838 Birch Court,
Oakland, California.

Dear Miss Durham:—

Yesterday being a holiday, plus the fact that I had been somewhat indisposed due to having con-

tracted a cold when last in San Francisco, I delayed sending you a check to take care of the matter that is uppermost in your mind at this time.

Herewith please find check No. 2054, for \$1500.00, made in your name. No doubt you will immediately deposit this with your bank, which is the proper thing to do, and if you will be good enough to take up the collateral, in the shape of Pacific Lumber Company stock, and send to me immediately I will appreciate it very much.

I hope you will please understand the great amount of work both Harry and I have had to take care of during the past thirty days and, therefore, make allowances for what, seemingly, was an unpardonable oversight.

It may be that our next trip to San Francisco will not be made for several days. In that event, please take time to write us.

With best wishes and kindest regards from Harry and myself.

Sincerely yours,
J. W. RANDOLPH.

JWR:S. [93]

EXHIBIT "LL."

CHARLES WESLEY COMPANY

Edwards & Wildey Bldg.

Sixth St. and Grand Ave.

Los Angeles

High Grade Investment Securities

All Standard Oil Stocks

Bell Telephone

Unlisted Stocks

Connections

Bonds

October 28, 1925.

Miss Mary Esther Durham,

5838 Birch Court,

Oakland, Calif.

Dear Miss Durham:

I know you will be very happy to learn that the expected company dividend check will be in your hands on Saturday of this week.

It is highly probable that Harry will be in the bay region within the next few days, so therefore you may expect a 'phone call.

The matter of taking up the loan secured by Pacific Lumber Company stock may be discussed thoroughly and to your satisfaction I am sure.

Our business is growing very rapidly and I hope you and Aunt Emily will be able to work out a plan so that my suggestion regarding your visiting this city will be acted upon before very many days.

With sincerest of good wishes to you and Aunt Emily and hoping to visit you real soon, I am

Very sincerely,
J. W. RANDOLPH.

JWR:BA. [94]

EXHIBIT "MM."

CHARLES WESLEY COMPANY

Edwards & Wildey Bldg.
Sixth St. and Grand Ave.
Los Angeles.

High Grade Investment Securities

All Standard Oil Stocks

Bell Telephone

Unlisted Stocks

Connections

Bonds

February 2, 1926.

Miss Mary Esther Durham,
5838 Birch Court,
Oakland, California.

My dear Miss Durham:

I am extremely sorry to learn, from your letter of January 30, that Mrs. Beans has been ill and I sincerely hope she will rapidly regain her normal health.

I am rather surprised to learn that the "all important" matter regarding a check has not been taken care of. It was my understanding that this, as well as other matters that have to do with affairs in the Bay region were being taken care of by Mr. Kassimir.

I will immediately communicate to him the important facts of your letter. In the meantime please remember me kindly to Mrs. Beans and accept my best wishes for yourself.

Yours sincerely,

J. W. RANDOLPH.

JWR:M. [95]

EXHIBIT "NN."

THOMAS ALLEN COMPANY

White-Henry-Stuart Building

Investment Securities

Seattle, Wash.

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Elliott 4520

February

19

1926

Miss Mary Esther Durham,
5838 Birch Court,
Oakland, California.

Dear Mary Esther:

To say that I was happy to hear from you and news about Aunt Emily would be using too mild a term.

You remember when I was over to see yourself and Aunt Emily I spoke to you that we had in mind opening up here in the North, and I am happy to

report to you that everything here is going along wonderfully well.

I did not understand at the time that we spoke about the \$1500.00 that it would be a necessity to lift that loan at the bank, so I did not prepare myself for that reason, but if it is a case of necessity I will try to arrange to forward this \$1500.00 on to you. I am enclosing check for \$241.00 on account of dividends.

I am glad to hear that Aunt Emily is gaining and tell her not to worry so much because all is well that ends well. I can assure you that we are doing all possible so that we may all enjoy success.

In reference to the stock Certificates I still have them as I really was too busy to have the names changed properly, but will do so in the very near future and send them to you.

Just believe me when I say that I hope that both Aunt Emily and yourself will have nothing to worry about. I will keep you informed of all activities. With my best wishes and regards to both Aunt Emily and yourself, I am

Sincerely yours,

HARRY KASSMIR.

HMK :B.

encl.

[Envelope.]

Special Delivery.

[Stamped:] Seattle, Wash., Feb. 19, 5 P. M.,
1926, Terminal Sta.

[Twelve Cents U. S. Postage Stamps Attached.]

MISS MARY ESTHER DURHAM,
5838 Birch Court,
Oakland, California. [96]

EXHIBIT "OO."

THOMAS ALLEN COMPANY
White-Henry-Stuart Building
Investment Securities
Seattle, Wash.

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Elliott 4520

March

15

1926

Miss Mary Esther Durham,
5838 Birch Court,
Oakland, Calif.

Dear Aunt Emily and Mary Esther,

You must pardon me for not answering your letter of March 7th immediately, but as I have been so busy and out of the city working I really have not had an opportunity to answer your letter the way that I wanted to.

I shall see that you have your dividends in your hands by April 5th and will do everything possible to see that you will not have to worry about your bank loan on May 17th.

I know how this loan has worried both Aunt Emily and yourself and feel that I am partly responsible for a good deal of the annoyance that was caused you.

I should say that you are not unreasonable in asking me anything you would like to know and I am only too glad to answer so that you may understand everything.

Business here is coming along as well as could be expected for a new organization, and I can assure you that we are working mighty hard, as you can realize, to make a success of OUR business. I do not see anything to worry about in the future as from all indications we are going to be a huge success.

I certainly hope that Aunt Emily is coming along and that by the time you receive this letter she has fully recovered from her last attack.

We have had some unfortunate happenings again in our family. My Dad was taken sick and they thought he had a tumor on his liver and he was sent to the Mayo Clinic at Rochester, but as they have diagnosed his trouble as gall stones I do not feel worried. My Mother is also bothered with her heart, so you can see we all have sickness but viewing it as Aunt Emily does I know everything will be all right.

Nothing else for today excepting my best wishes to yourself and Aunt Emily, I am

Sincerely yours,

HARRY M. KASSMIR.

[Envelope.]

Special Delivery.

[Stamped]: Seattle, Wash., Mar. 15, 7:30 P. M.,
1926. Terminal Sta. Lets Go! Citizens' Military
Training Camp.

[Two Cents U. S. Postage Stamp Attached.]

MISS MARY ESTHER DURHAM,
5838 Birch Court,
Oakland, Calif. [97]

EXHIBIT "PP."

CHARLES WESLEY COMPANY

Investment Securities

609 So. Grand Avenue

Los Angeles

Telephone

Trinity 1371

June 26, 1926.

Dear Mrs. Beans:

Have been anxiously waiting a reply to my letter
of several days ago, which was in answer to yours
of June 6th.

The last letter I had from Mr. Kassmir dated
June 16th, stated he had received a letter from
Miss Durham and he would reply to it immediately.
Since then I've heard nothing.

Write me if you please and tell me all the news.

Kindest regards to you and Miss Durham.

Most sincerely,

J. W. RANDOLPH.

[Envelope.]

[Stamped]: Pasadena, Jun. 26, 3 P. M., 1926.
Calif.

Charles Wesley Company
Investment Securities
609 So. Grand Avenue
Los Angeles

MRS. EMILY A. BEANS,
5838 Birch Court,
Oakland,
Calif. [98]

EXHIBIT "QQ."

THOMAS ALLEN COMPANY
White-Henry-Stuart Building
Investment Securities
Seattle, Wash.

High Grade Investment Securities

All Standard Oil Stocks

Unlisted Stocks

Bonds

Telephone

Elliott 4520

July,

7

1926

Miss Mary Esther Durham,
5838 Birch Court
Oakland, Calif.

Dear Mary Esther:

I did not write you because I really expected to come to San Francisco for over the 4th, but I found

it was impossible for me to get away at this time. It really is with regret that I say this, but I hope that it wont be very long before I will be down to see both yourself and Aunt Emily and to look over the gladeolis that I know you have and are beautiful.

It certainly makes me feel happy to know that Aunt Emily is gaining and I hope it wont be long before she is back into the condition that I would like to see her in.

If you will send me a letter upon receipt of this and let me know just the amount of that dividend, I will send you a check immediately. Hope that both yourself and Aunt Emily are in the best of health and that you enjoyed a pleasant 4th of July. I am with my best wishes to you both, as ever

Sincerely yours,

HARRY KASSMIR.

[Envelope.]

[Stamped]: Seattle, Wash., Jul. 8, 9 A. M., 1926.
Terminal Sta.

[Two Cents U. S. Postage Stamp Attached.]

MISS MARY ESTHER DURHAM

5838 Birch Court,

Oakland, Calif. [99]

EXHIBIT "RR."

Seattle, Wash.

March 8th, 1927.

Dear Mrs. Beans and Miss Durham:

I am enclosing a copy of letter that I am sending to Mr. Allen, the attorney that wrote me regarding your transaction.

I am extremely sorry that it was necessary for you to place this matter in the hands of an attorney. I know that both of you appreciate just how hard I have been trying to clear up the sad mess that Mr. Simon left in San Francisco for us all and you can believe me, I have had my hands full. I know that it will only be a matter of a short time before I will be able to take care of a part of the amount due you folks. I extremely regret the delay because of knowing the situation that you both are in, I can only say that I promise to do my level best to clear this up. I hope that you will look upon this matter so that you will withdraw it from the attorneys hands.

I can imagine the beautiful sunshine that you folks are enjoying in Oakland and can picture in my minds eye the beautiful flowers around your home, wish I was there to enjoy them. With the trials and tribulations that I have had the past year I certainly do wish that I was back South. I expect to make a trip to San Francisco in the very near future and you can bet I will call upon you when I get there.

With my kindest and best wishes to both of you, I
am

Sincerely yours,
HARRY KASSMIR. [100]

EXHIBIT "SS."

Seattle, Wash.
March 8th, 1927.

Mr. John J. Allen, Jr., Atty.,
902 Syndicate Bldg.,
Oakland, Calif.

Dear Mr. Allen:

No doubt you received my telegram and wondered why you have not received this letter sooner but immediately upon sending you telegram I received a message calling me out of the city and did not return until this morning. I hope you will pardon the delay in answering.

Regarding Mrs. Beans and Miss Durham, it has been impossible for me to check up on the amount due them because all of these records were kept in San Francisco and as I intend making a trip to San Francisco very shortly I then will be able to check up the amount and will also call upon you so that we may be able to go into this matter thoroughly. Allow me to give you a brief history of the transaction between Mrs. Beans and Miss Durham and the firm of Cromwell Simon & Company.

Mrs. Beans and Miss Durham had entered into contract with the firm of Cromwell Simon & Company for the purchase of different stocks (I do not

remember the dates but will give them all to you later). Because of reputation that Mr. Simon had, unbeknown to me or to my associates there, the Corporation Department called Cromwell Simon & Company before them for a hearing and revoked their permit. Knowing that this firm was trying to operate legitimately, my associates and myself decided to take this matter into Superior Court. About the time of the hearing before Superior Court, Mr. Simon decided that it would be a good thing for him to skip out with all funds available, which he did.

Mr. Randolph and myself called upon Mrs. Beans and Miss Durham and explained the situation to them and as we have always felt and I feel at the present time that they are very dear friends and we did not want them to suffer any loss, this transaction was made a loan so that I could repay the amount due them.

I have been doing everything possible so that this matter can be settled and hope to be able to send a substantial amount to these folks within the very near future.

I know that if you will take this matter up with Mrs. Beans and Miss Durham they will look upon it this way as they understand all of the circumstances. Hoping to receive a favorable reply from you, I am

Sincerely yours, [101]

EXHIBIT "TT."

Seattle, Wash.

March 8th, 1927.

Mr. John J. Allen, Jr., Atty.,
902 Syndicate Bldg.,
Oakland, Calif.

Dear Mr. Allen:

No doubt you received my telegram and wondered why you have not received this letter sooner but immediately upon sending you telegram I received a message calling me out of the city and did not return until this morning. I hope you will pardon the delay in answering.

Regarding Mrs. Beans and Miss Durham, it has been impossible for me to check up on the amount due them because all of these records were kept in San Francisco and as I intend making a trip to San Francisco very shortly I then will be able to check up the amount and will also call upon you so that we may be able to go into this matter thoroughly. Allow me to give you a brief history of the transaction between Mrs. Beans and Miss Durham and the firm of Cromwell Simon & Company.

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Mr. Randolph and myself called upon Mrs. Beans and Miss Durham and explained the situation to them and as we have always felt and I feel at the present time that they are very dear friends and we did not want them to suffer any loss, this transaction was made a loan so that I could repay the amount due them.

I have been doing everything possible so that this matter can be settled and hope to be able to send a substantial amount to these folks within the very near future.

I know that if you will take this matter up with Mrs. Beans and Miss Durham they will look upon it this way as they understand all of the circumstances. Hoping to receive a favorable reply from you, I am

Sincerely yours,

H. M. KASSMIR.

[Envelope.]

Special Delivery

[Twelve Cents U. S. Postage Stamp Attached.]

[Stamped:] Seattle, Wash. Mar. 8, 3 P. M.,
1927. Terminal Sta. Let's Go! Citizens' Military
Training Camps.

MR. JOHN J. ALLEN, Jr.,
Attorney at Law,
902 Syndicate Bldg.,
Oakland, Calif. [102]

EXHIBIT "UU."

High Grade Investment Securities

All Standard Oil Stocks	Telephone
Bonds	Kearny 6940

CROMWELL SIMON & CO.

Suite 212—Mills Building

220 Montgomery Street

San Francisco

The Romance of Studebaker

Do you realize that the stock of the Studebaker Corporation is now paying dividends that yield 9% a year—\$1.00 a share every three months. Do you realize its earnings last year were over \$7.00 a share and they are now running at the rate of \$11.00 a share for 1925. This indicates increased dividends and a much higher price for the stock.

ADVANCED FROM \$34 TO \$151 PREVIOUSLY

The market character of Studebaker Corporation stock is fairly indicated by the advance of the so-called "old" stock (prior to the big stock divi-

dends) from \$34 to \$151 per share in the last great bull market—1918 to 1919. It is as big an opportunity below \$50 today as it was at \$34 a few years ago, considering the greatly added values through the millions of dollars of earnings “plowed back” to the corporation. Its sales and profits are increasing by leaps and bounds and every factor that caused the old stock to advance is in progress again.

WONDERFUL DIVIDENDS

Throughout the entire career of Studebaker and particularly during the past 50 years, it has distributed enormous cash and stock dividends. Since the incorporation of the motor corporation in 1911, *it has paid over \$70 per share in cash dividends and another 58%¹ in stock dividends.* The stock dividends were far more valuable than the cash.

BE A PARTNER

Many persons have purchased shares in new automobile companies. Why not be a partner in one of the oldest and strongest of them all? There are few concerns in this country 73 years in business continuously, in which it is possible to buy an interest at anything like a reasonable price. Buy shares in Studebaker. Be a partner in this great enterprise.

INVESTMENT IS SAFE

Everyone knows that Studebaker is one of the greatest motor companies of the world. Hence it is a fine, safe investment. The stock is listed on the New York Stock Exchange and you can find out its value any day simply by looking at your daily

paper. Act at once, as Studebaker is rising, due to enormous increase in announced profits, as a result of greater sales for 1925.

It is interesting to figure the present value of an original 100 shares Studebaker traded in on the Exchange; \$3,675 for 100 shares in 1912 would have been increased to \$10,065 by subscriptions to stock offered in 1914 and 1920, while the original 100 shares would have increased to 270 by these subscriptions, as well as stock dividends of 33 1/3% in 1920, and 25% in 1922. The owner has also received continuous dividends from 1915, totaling \$69.50 a share, and representing a cash value in excess of \$10,000 on his holdings. In other words, during twelve years, the original investment has more than trebled in value.

Can you afford to overlook this opportunity?

POST CARD.

[Two Cents U. S. Postage Stamp Attached.]

This Card is

already

signed

for your

convenience

Mail it

To-day!

CROMWELL SIMON & COMPANY

220 Montgomery Street

San Francisco

California. [103]

EXHIBIT "VV."

I should like to have complete information regarding the dividends and investment possibilities of

THE STUDEBAKER CORPORATION

Send me your report and full information how I can buy this stock.

This card
will bring
full details
without
obligation
on your part

PHIL A. NAGAN
3126 Clay
City

[Envelope.]

[Stamped]: San Francisco, Calif., May 16, 1:30 P. M., 1925. Let's go! Citizens Military Training Camps.

Let's go! Citizens Military Training Camps.

[One Cent U. S. Postage Stamp Attached.]

Is your
money
bringing
with safety
9% [104]

EXHIBIT "WW."

SAMUEL H. ROBINSON

Attorney at Law

Hobart Building

San Francisco, California.

July 25, 1925.

Mr. Leroy F. Pike,
City Attorney,
Reno, Nevada.

Re: Cromwell & Company, Inc.

Dear Mr. Pike:—

I am enclosing original and two copies of the articles of incorporation of Cromwell & Company, Inc.—the name which we have decided upon for the business now being conducted as Cromwell Simon Company, and also our check in the sum of Two Hundred Dollars, for necessary filing expenses, fees, etc. I would appreciate your looking through the articles to determine whether they are in good form in your opinion, and filing them, and immediately sending to me copies certified by the Secretary of State.

Will you please provide for the three dummies, and I will write you later as to what should be done in reference to the holding of meetings and the passage of resolutions.

Mr. Kassmir is going to subscribe for a large block of the preferred stock, and the probabilities are that the common shares will be issued for services.

Please send me also an itemized statement from the Secretary of State, showing what the disbursements to him were, so that I may be informed what the fees are for my future guidance. In the event that any additional moneys are required in excess of the check enclosed please expend the money from your own funds and I will guarantee that you will be reimbursed. Also advise me what your fees in reference to the matter are.

You will note that we have decided to have the resident agent in our own Reno office, which, I think, is the most practical way of handling the situation in as much as we are actively doing business there. In the event you desire any further information or advice do not hesitate to wire or phone me at my expense.

Let me recall to you your promise that you would give me the address of the lady who owned the prospective hotel site in Reno. I would appreciate your letting me know this immediately so that if we are to see her we can call upon her before our next trip to Reno.

Mr. Kassmir and myself appreciate very much your hospitality, and hope to be able to reciprocate upon your next [105]

EXHIBIT "XX."

L. F. P. 7/25/25 Page 2.
visit here.

I am not unmindful of my promise that a certain vintage would be reserved for you. It is probable

that we shall call upon you the latter part of next week, probably about Friday or Saturday, which will be July 31st or August 1st.

Yours cordially,
SAMUEL H. ROBINSON.

SHR:FN

Encs. [106]

EXHIBIT "YY."

SAMUEL H. ROBINSON
Attorney at Law
Hobart Building
San Francisco

August
twenty-sixth
1925.

LeRoy F. Pike, Esq.,
Attorney-at-law,
City Hall,
Reno, Nevada.

Dear Sir:

This will tardily acknowledge your letter accompanying the minutes of Cromwell & Company and Cary & Company, which are made out in very good shape. Will you please arrange to have the following certificates made out:

~~First: Issue certificates representing 2,000 shares of preferred and 500 shares of common capital stock of Cromwell & Company to Harry M. Kassmir;~~

Second: Transfer on your records the following shares and to the following individuals from the ~~above certificates: 140 shares of the preferred and 35 shares of the common, to Mrs. B. M. Ogier and Clara Oliver, as joint owners with right of survivorship;~~

Third: ~~Transfer the following shares to the following individuals from the certificates designated in paragraph "First": 40 shares preferred and 10 shares of common to Clara Oliver;~~

Fourth: ~~Transfer the following shares to the individuals named from the certificates designated in paragraph "First" issued to Harry M. Kassmir, 160 shares preferred, 40 shares common to Emily A. Beans;~~

Fifth: ~~Transfer the following shares to the following individuals from the certificates originally issued under paragraph "First," 274 shares preferred and 269 common to Emily A. Beans and Esther Mary Durham as joint owners with right of survivorship. [107]~~

EXHIBIT "ZZ."

LeRoy F. Pike, Esq. 8-26-25 Page 2

Will you please issue these certificates and mail them down to this office at your earliest convenience.

Very truly yours,
SAMUEL H. ROBINSON.

Kearny 4357.

SHR:MC.

Pg—1378 Fed. Code—

Original issue 2000 shares preferred at \$25.00=
\$50,000 at 5¢=\$25.00 tax.

500 shares common no par at 5¢ per share=\$25.00

Transfer issue.

3500 at 2¢=	70¢
140 pref, at \$25=	"
35 shares common—no par	70¢
40 " pref.—at 25—at 2=	20¢
10 " common—no par at 2=	20¢
160 pref.—at 25¢=at 2=	80¢
40 shares common	80¢
274—pref.—	136
269—common—	5.38

EXHIBIT "AAA."

SAMUEL H. ROBINSON

Attorney at Law
Hobart Building
San Francisco

August
thirty-first
1925.

Leroy F. Pike, Esq.,
Attorney-at-law,
Reno, Nevada.

Dear Mr. Pike:

In re CROMWELL, INC.

Several days ago I wrote you asking you to issue various certificates in accordance with the instructions contained in my letter. My client has been besieging me continuously since then because he in turn has been importuned for delivery of the certificates. I would appreciate your doing what you can to expedite this matter.

Will you please take care of the affixing of revenue stamps to the original certificates, also the transfers. I need hardly say that with reference to this expense as well as all expenses, that I leave all disbursements to your own good judgment, and you may be assured that they will be met upon the rendering of an account by you.

By the way, several of us reserved a certain Monday evening for you because we expected you to be with us on that occasion, and we were much disap-

pointed because you failed to get in touch with us. Won't you let me know when you are coming next to San Francisco.

In appreciation of your good offices, I am,
Cordially yours,
SAMUEL H. ROBINSON.

Kearny 4357.

SHR:MC. [109]

EXHIBIT "BBB."

SAMUEL H. ROBINSON, Esq.
Attorney at Law
Hobart Building
San Francisco, Calif.

September
eighteenth
1925

LeRoy F. Pike, Esq.,
Attorney-at-law,
City Hall,
Reno, Nevada.

In re CROMWELL & COMPANY, INC.

Dear Mr. Pike:

I am enclosing Certificates Nos. 3 and 5 of the preferred, and Nos. 54 and 55 of the common shares in the above Company, heretofore issued, for cancellation because there was an error on my part in the instructions to you.

Please issue in their place two certificates:—one representing ~~482~~ shares of preferred, and the other

representing 121 shares of the common, making both of them out to Emily A. Beans and Mary Esther Durham, as joint owners with right of survivorship. I believe that no revenue stamps are necessary on these, because they are merely to replace certificates issued erroneously and do not in any sense constitute a transfer.

I appreciate very much your wire with reference to my brief case and your speed in sending it on to me.

I am also in receipt of the two compressed sawdust blocks which have been on my desk the last couple of days and which have been examined by a number of people. What its commercial possibilities are I have not yet been able to determine, but I am advised by one engineer that one of the difficulties to be met in marketing a product of that kind as fuel, is in securing an advantageous classification and rate from the carriers. The railroads are themselves interested in fuel deposits and might look upon your briquet as a competitive product. It has been stated to me that this was one of the difficulties encountered in marketing the coal briquets manufactured formerly by Los Angeles Gas & Electric Company, I am

Yours very truly,
SAMUEL H. ROBINSON

SHR:MC.

LFP:AP. [110]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 10th day of March, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, Judge.

[Title of Cause.]

MINUTES OF COURT—MARCH 10, 1928—ARRAIGNMENT, ETC.

The defendants Samuel H. Robinson and J. W. Randolph were present with H. H. Harris, Esq., their attorney, and the defendant Orton E. Goodwin was present with John A. McGee, Esq., his attorney. On motion of J. L. Sweeney, Esq., Asst. U. S. Atty., the defendants were arraigned, stated their true names to be as contained in indictment, and waived reading of said indictment. On motion of attorneys for said defendants, it is ordered that this case be continued to March 26, 1928, to plead. On motion of attorneys for the defendants, and upon filing the consent of the Surety Company on the bonds of said defendants, IT IS ORDERED that said defendants Samuel H. Robinson, J. W. Randolph and Orton E. Goodwin be and are hereby permitted to leave the jurisdiction of this court until March 26, 1928, in accordance with an order this day signed and filed.

Case continued to March 26, 1928, for entry of plea of defendant Harry M. Kassmir. [111]

[Title of Court and Cause.]

DEMURRER OF DEFENDANT SAMUEL H.
ROBINSON.

Comes now the defendant, Samuel H. Robinson, and demurs to the indictment heretofore presented and on file herein, and to each and every count thereof on the following grounds, to wit:

I.

That said indictment does not, nor any count thereof, state facts sufficient to constitute a public offense against the United States of America.

II.

That the indictment and each and every count thereof fails to advise the defendant herein sufficiently of the charge or charges that he is called upon to meet and does not contain averments sufficient to enable him to intelligently prepare for his trial and that in said behalf, each count thereof is ambiguous, unintelligible and insufficient in the following particulars:

1. That the paragraph beginning at line 12 and page 1 of said indictment herein, is unintelligible, ambiguous and meaningless and that the meaning intended to be conveyed thereby cannot be ascertained therefrom. [112]

2. That with reference to the paragraph beginning on line 29 and page 1 of said indictment, it

cannot be ascertained therefrom what part or connection, if any, the defendant, Samuel H. Robinson, had with said scheme or in what way he devised or intended by means of the allegations thereof to take part in said scheme to defraud.

3. That with further reference to said last-mentioned paragraph in said indictment, it cannot be ascertained therefrom whether the acts specified therein were actually performed.

4. That the paragraph beginning with line 21 of page 2 of said indictment is uncertain and ambiguous in that it cannot be ascertained therefrom,—(a) What relation, if any, Cromwell & Company, Inc., had to the alleged scheme or device, (b) Whether the said Samuel H. Robinson did in fact mail said Articles of Incorporation to LeRoy F. Pike at Reno, Nevada. (c) Whether said Robinson did request said Pike to obtain dummy directors. (d) In what manner said acts were unlawful or in violation of the statutes of the United States or any state or territory thereof. (e) What relation, if any, the said acts had to said alleged scheme or artifice to defraud.

5. With relation to paragraphs beginning on line 5 and ending on line 12 of page 3 of said indictment, it does not appear and cannot be ascertained therefrom,—(a) Whether it was part of the scheme or artifice to defraud that defendant, Kassmir, should offer to subscribe or should pay the sum of Fifty Thousand (\$50,000.00) Dollars cash for said stock, or whether he should pay the said Fifty Thousand (\$50,000.00) Dollars. (b) That

the falsifying or negating paragraph thereof does not allege that the said Kassmir did not [113] offer to subscribe, (c) That said negating paragraph states, "as defendant then and there well knew," but does not state which defendant then and there well knew that Kassmir did not pay Fifty Thousand (\$50,000.00) Dollars cash. (d) That it cannot be ascertained therefrom who seconded, offered and/or passed said resolution, that is to say whether it was Cromwell, Simon and Company, Cromwell and Company or some other board, body or organization, or what relation said resolution had to said scheme or artifice. (e) That generally it cannot be ascertained in what manner said acts were a part of or in furtherance of said scheme or artifice to defraud.

6. With relation to paragraph beginning on line 13 and ending on line 27 of page 3 of said indictment, it cannot be ascertained therefrom, nor from any part of said indictment, (a) What is meant or intended to be meant by "Cromwell Simon and Co. Investment Plan," (b) What false and fraudulent representations or promises were made or intended to be made.

That the statements made therein are recitals of conclusions of law only and not allegations of fact.

7. With relation to paragraph beginning on line 5 of page 4, it cannot be ascertained therefrom nor from any part of said indictment, what false representations were to be used to induce and/or persuade the victims to purchase high-grade stock under the alleged Cromwell & Simon Co. Investment

Plan,—(a) What the Cromwell & Simon Co. Investment Plan was.

8. With relation to paragraph beginning on line 14 and ending on line 22 of page 4 of said indictment, it cannot be ascertained therefrom nor from any part of said indictment,— [114] (a) What time is referred to by the words “existing conditions.” (b) What is meant by the language, “alluring, exaggerated, misleading, false and fraudulent representations,” *that to* say what the alluring, exaggerated, misleading false and fraudulent representations related to. (c) What the language, “should raise in said victims hopes and expectations of profit and reward far beyond the limits warranted by existing conditions” relates to, or what connection same had, if any, with said artifice or scheme to defraud.

9. With relation to paragraphs beginning with line 24 and ending with line 31 of page 4, it cannot be ascertained therefrom nor from any part of the said indictment,—(a) In what respect it is alleged that Cromwell Simon & Co. was a reputable company, that is to say, reputed for what. (b) That the negating and falsifying clause does not deny or allege that Cromwell Simon & Co. was a reputable brokerage company. (c) That it cannot be ascertained what is meant by “of the character of a bucket shop.” (d) That the allegations in said paragraph as to representations were only representations of opinion and “puffing” permitted by law.

10. With reference to the paragraph beginning

on line 1 and ending on line 7 of page 5 of said indictment, it cannot be ascertained whether in truth or in fact it was or was not the business of Cromwell Simon & Co. to sell to alleged victims high-grade corporation stocks and other securities, particularly on the partial payment plan.

11. With relation to paragraph 3 on page 5 of said indictment, it cannot be ascertained therefrom, nor from any part of said indictment what is meant by,—(a) Cromwell Simon & Co. Investment Plan. [115]

12. With relation to paragraph 4 on page 5 of said indictment, it cannot be ascertained therefrom nor from any part of said indictment when or in what manner the alleged victims would draw any dividends or interest declared on high-grade stock or other securities so purchased and held by them, that is to say, said victims, or in what manner, if at all, this defendant would or could become possessed of said dividends or interest, or any of said defendants or in what manner said Cromwell Simon & Co. could or would become possessed of said dividends or interest thereon.

13. With relation to paragraph 5 appearing on page 6 of said indictment, it cannot be ascertained therefrom, nor from any part of said indictment what relation the following words, to wit: “that an investor subscribing for such corporate stock, or other securities, through the said company, would have the privilege of selling the same at any time he desired” would have as to the alleged scheme or artifice to defraud in this, that it is not

negatived or falsified that said investors referred to in said indictment had such privilege.

14. That Count 1 of said indictment does not state facts sufficient to constitute an offense against the United States of America; that said count does not allege that the letter set forth in said count was ever placed or caused to be placed in the United States mail.

15. That with respect to the letters referred to in each and all of the counts of said indictment, only the following are purported to be signed by or referred to the said defendant, Samuel H. Robinson: The letter referred to in [116] Count Eleven and marked Exhibit "S," the letters referred to in Count Thirty-five and marked "WW" and "XX," the letters referred to in Count Thirty-six and marked "YY" and "ZZ," the letter referred to in Count Thirty-seven and marked "AAA" and the letter referred to in Count Thirty-eight and marked "BBB," and it does not appear in the said indictment or any of the counts thereof what connection, if any, said Samuel H. Robinson had with the mailing of each and all of the exhibits referred to in this indictment and all of the various counts thereof.

SAMUEL H. ROBINSON,
Defendant.

H. H. HARRIS,
Attorney for Samuel H. Robinson.

[Endorsed]: Filed Mar. 26, 1928. [117]

[Title of Court and Cause.]

DEMURRER OF DEFENDANT J. W. RANDOLPH.

Comes now the defendant, J. W. Randolph, and demurs to the indictment heretofore presented and on file herein, and to each and every count thereof on the following grounds, to wit:

I.

That said indictment does not, nor any count thereof, state facts sufficient to constitute a public offense against the United States of America.

II.

That the indictment and each and every count thereof fails to advise the defendant herein sufficiently of the charge or charges that he is called upon to meet and does not contain averments sufficient to enable him to intelligently prepare for his trial and that in said behalf, each count thereof is ambiguous, unintelligible and insufficient in the following particulars:

1. That the paragraph beginning at line 12 and page 1 of said indictment herein, is unintelligible, ambiguous and meaningless and that the meaning intended to be conveyed thereby cannot be ascertained therefrom. [118]

2. That with reference to the paragraph beginning on line 29 and page 1 of said indictment, it cannot be ascertained therefrom what part or connection, if any, the defendant, J. W. Randolph,

had with said scheme or in what way he devised or intended by means of the allegations thereof to take part in said scheme to defraud.

3. That with further reference to said last mentioned paragraph in said indictment, it cannot be ascertained therefrom whether the acts specified therein were actually performed.

4. That the paragraph beginning with line 21 of page 2 of said indictment is uncertain and ambiguous in that it cannot be ascertained therefrom,—(a) What relation, if any, Cromwell & Company, Inc., had to the alleged scheme or device. (b) whether the said Samuel H. Robinson did in fact mail said Articles of Incorporation to LeRoy F. Pike at Reno, Nevada. (c) Whether said Robinson did request said Pike to obtain dummy directors. (d) In what manner said acts were unlawful or in violation of the Statutes of the United States or any state or territory thereof. (e) What relation, if any, the said acts had to said alleged scheme or artifice to defraud.

5. With relation to paragraphs beginning on line 3 and ending on line 12 of page 3 of said indictment, it does not appear and cannot be ascertained therefrom,—(a) Whether it was part of the scheme or artifice to defraud that defendant, Kassmir, should offer to subscribe or should pay the sum of Fifty Thousand (\$50,000.00) Dollars cash for said stock, or whether he should pay the said Fifty Thousand (\$50,000.00) Dollars. (b) That the falsifying or negating [119] paragraph thereof does not allege that the said Kassmir did not offer to sub-

scribe. (c) That said negating paragraph states, "as defendant then and there well knew," but does not state which defendant then and there well knew that Kassmir did not pay Fifty Thousand (\$50,000.00) Dollars cash. (d) That it cannot be ascertained therefrom who seconded, offered and/or passed said resolution, that is to say whether it was Cromwell, Simon and Company, Cromwell and Company or some other board, body or organization, or what relation said resolution had to said scheme or artifice. (e) That generally it cannot be ascertained in what manner said acts were a part of or in furtherance of said scheme or artifice to defraud.

6. With relation to paragraph beginning on line 13 and ending on line 27 of page 3 of said indictment, it cannot be ascertained therefrom, nor from any part of said indictment,—(a) What is meant or intended to be meant by "Cromwell Simon and Co. Investment Plan,"—(b) What false and fraudulent representations or promises were made or intended to be made.

That the statements made therein are recitals of conclusions of law only and not allegations of fact.

7. With relation to paragraph beginning on line 5 of page 4, it cannot be ascertained therefrom nor from any part of said indictment, what false representations were to be used to induce and/or persuade the victims to purchase high-grade stock under the alleged Cromwell & Simon Co. Invest-

ment Plan,—(a) What the Cromwell & Simon Co. Investment Plan was.

8. With relation to paragraph beginning on line 14 and ending on line 22 of page 4 of said indictment, it cannot be ascertained therefrom nor from any part of said indictment,— [120] (a) What time is referred to by the words “existing conditions,” (b) What is meant by the language, “alluring, exaggerated, misleading, false and fraudulent representations,” that is to say what the alluring, exaggerated, misleading, false and fraudulent representations related to. (c) What the language, “should raise in said victims hopes and expectations of profit and reward far beyond the limits warranted by existing conditions” relates to, or what connections same had, if any, with said artifice or scheme to defraud.

9. With relation to paragraphs beginning with line 24 and ending with line 31 of page 4, it cannot be ascertained therefrom nor from any part of the said indictment,—(a) In what respect it is alleged that Cromwell Simon & Co. was a reputable company, that is to say, reputed for what. (b) That the negating and falsifying clause does not deny or allege that Cromwell Simon & Co. was a reputable brokerage company. (c) That it cannot be ascertained what is meant by “of the character of a bucket shop.” (d) That the allegations in said paragraph as to representations were only representations of opinion and “puffing” permitted by law.

10. With reference to the paragraph beginning

on line 1 and ending on line 7 of page 5 of said indictment, it cannot be ascertained whether in truth or in fact it was or was not the business of Cromwell Simon & Co. to sell to alleged victims high-grade corporation stocks and other securities, particularly on the partial payment plan.

11. With relation to paragraph 3 on page 5 of said indictment, it cannot be ascertained therefrom nor from any [121] part of said indictment what is meant by,—(a) Cromwell Simon & Co. Investment Plan.

12. With relation to paragraph 4 on page 5 of said indictment, it cannot be ascertained therefrom nor from any part of said indictment when or in what manner the alleged victims would draw any dividends or interest declared on high-grade stock or other securities so purchased and held by them, that is to say, said victims, or in what manner, if at all this defendant would or could become possessed of said dividends or interest, or any of said defendants or in what manner said Cromwell Simon & Co. could or would become possessed of said dividends or interest thereon.

13. With relation to paragraph 5 appearing on page 6 of said indictment, it cannot be ascertained therefrom nor from any part of said indictment what relation the following words, to wit: "that an investor subscribing for such corporate stock, or other security, through the said company, would have the privilege of selling the same at any time he desired," would have as to the alleged scheme or artifice to defraud in this that it is not negatived

or falsified that said investors referred to in said indictment had such privilege.

14. That Count 1 of said indictment does not state facts sufficient to constitute an offense against the United States of America; that said count does not allege that the letter set forth in said count was ever placed or caused to be placed in the United States mail.

15. That with respect to the letters referred to in each and all of the counts of said indictment, only the following are purported to be signed by or referred to the said defendant, J. W. Randolph: The letter referred to in Count [122] Three and marked Exhibit "F," the letter referred to in Count Eleven and marked Exhibit "P," the letter referred to in Count Nineteen and market Exhibit "EE," the letter referred to in Count Twenty-two and marked Exhibit "HH," the letter referred to in Count Twenty-three and marked Exhibit "II," the letter referred to in Count Twenty-four and marked Exhibit "JJ," the letter referred to in Count Twenty-four and marked Exhibit "KK," the letter referred to in Count Twenty-five and marked Exhibit "LL," the letter referred to in Count Twenty-seven and marked Exhibit "MM" and the letter referred to in Count Thirty and marked Exhibit "PP," and it does not appear in the said indictment or any of the counts thereof what connection, if any, said J. W. Randolph had with the mailing of each and all of the exhibits referred to in

this indictment and all of the various counts thereof.

J. W. RANDOLPH,
Defendant.

H. H. HARRIS,
Attorney for J. W. Randolph.

[Endorsed]: Filed Mar. 26, 1928. [123]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 26th day of March, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable A. F. ST. SURE, Judge.

[Title of Cause.]

MINUTES OF COURT—MARCH 26, 1928—
ORDER OVERRULING DEMURRERS, ETC.

The defendants Harry M. Kassmir, Samuel H. Robinson, J. W. Randolph and Orton E. Goodwin were present in court with their respective attorneys. The defendants filed demurrers to the indictment and a motion to quash indictment. After argument, IT IS ORDERED that said demurrers and said motion be and same are hereby submitted. Thereupon the defendants Harry M. Kassmir, Samuel H. Robinson, J. W. Randolph and Orton E. Goodwin each plead "Not Guilty" to the indictment

filed herein against them. ORDERED case be set for May 29, 1928, for trial.

The demurrers of the defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, and the motion of the defendant Orton E. Goodwin to quash indictment, heretofore heard and submitted, and the demurrers having been confessed as to the first count of the indictment, it is ordered that said demurrers be and the same are hereby sustained as to the first count of the indictment and that said demurrers be and the same are hereby overruled as to all other counts of the indictment herein, and that the motion of said Orton E. Goodwin to quash indictment be and the same is hereby denied. [124]

[Title of Court and Cause.]

PETITION FOR SEVERANCE (SAMUEL H. ROBINSON).

Now comes the defendant, Samuel H. Robinson, by his attorney, H. H. Harris, and respectfully prays the above-entitled court that he be tried separate and apart from the other defendants and that there be a severance as between him, as a defendant, and the other defendants, in the said entitled court and for ground of severance alleges as follows:

I.

That there is certain evidence necessary and material in his defense, which as to certain of the other defendants, particularly Harry M. Kassmir and

Cromwell Simon, would be inadmissible by reason of their privileged nature.

II.

That there is certain evidence material and necessary in his defense that would be inadmissible against any of the other defendants, particularly Harry M. Kassmir and Cromwell Simon, by reason of the fact that the introduction of those said facts on his behalf would be inadmissible over the objection of the other defendants on the ground that they [125] would thereby be compelled to testify against themselves without their consent.

III.

That the defense of Samuel H. Robinson is antagonistic to the defense of the other defendants in said cause.

IV.

That the defense of Samuel H. Robinson would implicate certain of the other defendants, particularly Harry M. Kassmir and Cromwell Simon.

V.

That the defense of Samuel H. Robinson cannot be presented fairly and properly in a joint trial with the other defendants and that the introduction of certain evidence pertaining to other defendants that would be as to him incompetent and immaterial, would seriously prejudice him.

H. H. HARRIS,
Attorney for Petitioner.

[Title of Court and Cause.]

AFFIDAVIT OF SAMUEL H. ROBINSON
FOR SEVERANCE.

State of California,
County of Los Angeles,—ss.

Samuel H. Robinson, being first duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action. That the date of the trial of the above-entitled cause has been set for May 29, 1928. That there are four other defendants; that unless this Court grants the petition of this affiant to have his trial severed from the trial of the other four defendants, he will be tried on said date, jointly with the other four defendants.

Your affiant is an attorney at law, duly licensed and admitted to practice in all of the courts of the State of California, and has been such for more than seven years last past. That he is charged jointly with four other defendants in thirty-eight counts in this indictment of having used the mails to defraud. Affiant states that his only relation with the other defendants was that of attorney and client; that of the thirty-eight letters upon which the thirty-eight counts of the indictment are predicated, only five have been [127] mailed or caused to be mailed by him. That these letters were sent out by him in the regular course of business and as part of his professional employment as attorney for certain of the other defendants; that

he never had any acquaintance with the other defendants, nor had any part in the scheme set out in the indictment, prior to June, 1925; that said indictment contains various letters alleged to have been sent out prior to that date. That for the purpose of his defense, it will be necessary for him to introduce a number of letters and documents passing between the defendants, Harry M. Kassmir, Cromwell Simon and your affiant. That in addition to these letters, there were numerous oral communications and that said letters, documents and oral communications were occasioned solely by the relations between the said defendants, Harry M. Kassmir, Cromwell Simon and your affiant, by reason of the relation of attorney and clients; that these communications are therefore privileged and therefore inadmissible and that an objection to their introduction will be made by at least one of the defendants jointly charged with affiant. That these letters, documents and communications are absolutely necessary in the defense of your affiant; that his inability to introduce them would result as to him in a serious miscarriage of justice and a prejudice of his rights.

That in order to introduce evidence necessary in his own defense, affiant expects and intends to take the stand on his own behalf and his evidence will implicate certain of the other defendants and his defense is antagonistic to them. [128]

WHEREFORE, your affiant prays an order of

this court severing his trial from the trial of the other defendants.

SAMUEL H. ROBINSON,

Affiant.

Subscribed and sworn to before me this 7th day of May, 1928.

[Seal] VIVIAN M. HOOPS,
Notary Public in and for said County and State.

My commission expires February 10, 1930.

[Endorsed]: Filed May 8, 1928. [129]

[Title of Court and Cause.]

MOTION OF J. W. RANDOLPH AND SAMUEL
H. ROBINSON FOR BILL OF PARTICULARS.

Now come J. W. Randolph and Samuel H. Robinson, by their attorney, H. H. Harris, and move the above-entitled court for an order directing the United States District Court for the Northern District of California, Southern Division, to furnish to said defendants a bill of particulars in order that said defendants may know and be particularly informed of the following matters, to wit:

(1) The names of the persons referred to in said indictment as victims.

(2) What particular certain class of persons the defendants had devised a scheme and artifice to defraud?

(3) When or during what period prior to the

mailing of the letters stated did defendants devise or intend to devise the scheme to defraud alleged in the indictment?

(4) The names and addresses of the persons to whom and the times and places when the defendants Cromwell Simon and Harry M. Kassmir as copartners or otherwise offered for sale or negotiated for the sale of or otherwise dealt in securities in the State of California. [130]

(5) Whether or not the defendant, Robinson, ever requested said Pike to obtain dummy directors and regularly incorporate Cromwell & Company, Inc., under the laws of the State of Nevada and if so when the said Pike did said things, and the names and addresses of said dummy directors.

(6) Whether or not Samuel H. Robinson, Harry M. Kassmir and Cromwell Simon ever visited Reno, Nevada, for the purpose of obtaining a meeting of the directors of Cromwell & Company, Inc., and if so the time when said visits occurred and the time when said meeting of said directors occurred.

(6a) What relation, if any, the formation and/or existence of Cromwell & Company, Inc., had or could have had to the alleged scheme or device.

(7) Whether or not the defendant, Kassmir, ever offered to subscribe \$50,000.00 of said company's stock and pay cash for it and if so the time and place when said offer was made.

(8) Who put the offer of Harry M. Kassmir to subscribe \$50,000.00 worth of stock in the form of a resolution and who seconded said resolution and

were the persons who voted and passed the same unanimously.

(9) Whether or not the offer of Harry Kassmir to subscribe \$50,000.00 worth of said company's stock was ever accepted by said company and if so the time and place when said acceptance occurred.

(10) What were the terms and conditions of the so-called Simon & Company investment plan.

(11) Whether or not the defendants J. W. Randolph or Samuel H. Robinson ever solicited or procured from the so-called victims subscriptions or orders for shares of corporate stock or other securities and if so the names [131] and addresses of said alleged victims and the time and place of said soliciting or procuring said subscriptions.

(12) What false or fraudulent representations or promises as to the financial standing of the Cromwell Simon & Company or of the defendant, Cromwell Simon, or Harry M. Kassmir were ever made by the defendants J. W. Randolph and Samuel H. Robinson.

(13) To what persons and at what time or place *were* any false or fraudulent representations or promises as to the financial standing of the Cromwell Simon & Company and of the defendants Cromwell Simon or Harry M. Kassmir were ever made by the defendants J. W. Randolph or Samuel H. Robinson.

(14) What false or fraudulent representations or promises as to the care or watchfulness exercised for the benefit of said alleged victims by the said

defendants over investments made with them were ever made by any of the defendants, particularly the defendants J. W. Randolph and Samuel H. Robinson.

(15) The time and place of making, the names of the defendants who made and the names of the persons to whom the defendants, J. W. Randolph or Samuel H. Robinson, made any false or fraudulent representations or promises as in the last paragraph above set forth.

(16) What false or fraudulent representations or promises as to the alleged safety of purchasing stocks or other securities through the defendants and the said Cromwell Simon Company were ever made by the defendants, J. W. Randolph or Samuel H. Robinson. [132]

(17) The time of making and the persons to whom the defendants J. W. Randolph or Samuel H. Robinson, made any false or fraudulent representations or promises as in the last next preceding paragraph set forth.

(18) Whether or not either of said defendants, J. W. Randolph or Samuel H. Robinson, required any alleged victims to deliver over to defendants valuable securities as alleged collateral to secure deferred payments on stock subscribed for and if so the names of said victims, together with a description of any securities delivered to defendants by them and the time and place of said delivery.

(19) Whether or not said defendants J. W. Randolph or Samuel H. Robinson ever took or embezzled or converted any collateral securities to their

own use or benefit and if so a description of said securities, the names of the persons from whom taken or procured, the names of the defendants who so took said securities, the names of the defendants who embezzled or converted said securities, together with the time and place of such taking, embezzlement and conversion.

(20) What were the false representations which the defendants or any of them did not then or there or ever intend to carry out or perform, particularly with reference to the defendants J. W. Randolph or Samuel H. Robinson.

(21) To whom were the false representations referred to in the last next preceding paragraph made or communicated by means of letters or circulars or advertisements and what were the contents of said letters, circulars and advertisements.

(22) The names of the persons to whom false representations which the defendants did not then or there or ever [133] intend to carry out or perform were made and the time and place of said making, together with the names of the defendants making them or the names of agents who made them on behalf of said defendants.

(23) Whether or not the defendants J. W. Randolph or Samuel H. Robinson or either of them ever made any of the alleged alluring, exaggerated, misleading, false or fraudulent representations, pretenses or promises as set forth in sub-paragraphs 1, 2, 3, 4, and 5 of each and every count of said indictment and if so made, the names of the defendants making them, the names of the persons

to whom made, the places where made and the time of the making thereof.

(24) What were or are sufficient financial resources necessary to carry on a reliable brokerage business?

(25) What was or is the financial resources of any of the defendants named in said indictment or of Cromwell Simon & Company?

(26) What is a responsible brokerage house and what is necessary to constitute the same?

(27) Whether or not the alleged representation that persons could rely upon the standing or financial standing of Cromwell Simon & Company was or was not true.

(28) Whether or not the representations that the business of Cromwell Simon & Company was to sell to the alleged victims high-grade corporate stock and other securities on the partial payment plan or otherwise was or was not true.

(29) Whether or not the defendants or any of them or Cromwell Simon & Company, and particularly the defendants J. W. Randolph and Samuel H. Robinson received any orders from any person or persons for the purchase from them of [134] any corporate stock or securities and if so the names of the persons placing said orders or offers together with the time and place thereof and a description of the stock or securities embraced in said orders.

(30) Whether or not the alleged false representation that the defendants would obtain subscriptions from the alleged victims for stocks and other se-

curities on the Cromwell Simon & Company investment plan and would immediately purchase the same at a market price for and on account of the said alleged victim and that Cromwell Simon & Company would hold the same so that the alleged victims could be certain that the stocks and other securities would be on hand for them when called for by them was or was not true.

(31) Whether or not Cromwell Simon & Company ever received any orders which required them to immediately purchase stock or other securities at the market price or otherwise for the account of said alleged victims and if so the persons who placed said orders, the time and place thereof and the contents of said orders.

(32) Whether or not any dividends or interest were ever declared or payable on any high-grade stock or other securities purchased and held by defendants or Cromwell Simon & Company for any persons at all and if so when said dividends were declared or said interest was payable and on what stocks or securities and to what persons the defendants or Cromwell Simon & Company should have paid the same.

(33) What were or are the qualifications necessary on the part of Cromwell Simon & Company to qualify it to advise victims when to buy or sell corporate stocks or other securities and in what portion of such qualification was said company deficient? [135]

(34) What are the facts which resulted in said victims not being able to *realize* upon the defend-

ants or any of them for safe or other information or advice in the matter of buying or selling stocks or securities?

(35) What amounts of money or property did defendants J. W. Randolph or Samuel H. Robinson ever appropriate or embezzle to their own use or benefit?

(36) From whom did defendants J. W. Randolph or Samuel H. Robinson ever procure any money or property which they appropriated or embezzled to their own use and benefit.

(37) The times and places where the defendants J. W. Randolph or Samuel H. Robinson or either of them ever appropriated or embezzled to their own use or benefit any money or property.

(38) How or in what manner Exhibits "A" to "BBB" either individually or collectively could have been or were in furtherance of any alleged scheme or artifice to defraud, particularly with relation to the defendants J. W. Randolph or Samuel H. Robinson.

(39) How or in what manner any letters written by or pertaining to the business of the Charles Wesley Company of Los Angeles, California, have been or were in furtherance of any scheme to defraud set forth in any of the counts of said indictment, and particularly the letters alleged to be mailed or caused to be mailed by the defendants J. W. Randolph or Samuel H. Robinson or either of them.

(40) How or in what manner any letters written by or pertaining to the business of Thomas

Allen Company of Seattle, Washington, could have been or were in furtherance of any scheme or artifice to defraud set forth in said indictment?

(41) That said aforementioned matter relates to [136] general allegations contained in the indictment on file herein and that more particular and specific knowledge of such matters is necessary to said defendants on their trial and that without such particular knowledge said defendants will be unable to properly prepare their defense to said indictment or to prepare any defense at all.

This motion is made upon the indictment on file herein, upon the matters set forth in this motion and on the affidavits of defendants J. W. Randolph and Samuel H. Robinson filed herewith and attached hereto.

Respectfully submitted,

H. H. HARRIS,

Attorney for Defendants, J. W. Randolph and Samuel H. Robinson. [137]

[Title of Court and Cause.]

AFFIDAVITS OF J. W. RANDOLPH AND
SAMUEL H. ROBINSON.

State of California,
County of Los Angeles,—ss.

J. W. Randolph and Samuel H. Robinson, being first duly sworn, each for himself deposes and says:

That he is one of the defendants in the above-entitled action; that the trial of the above-entitled

action has been set for the 29th day of May, 1928; that he is in possession of a copy of the indictment on file in the above-entitled action and that he has read the same; that said indictment purports to charge him with thirty-seven violations of section 215 of the Criminal Code of the United States; that said indictment contains and is almost entirely composed of allegations of acts alleged to have been committed by the defendants; that these acts are alleged in general terms and the indictment fails to allege the time, place or circumstances necessary to identification of any of the acts so alleged or necessary fully to advise affiant of the particular circumstances of said acts; that he has been informed by his attorney, H. H. Harris, and upon such information believes and alleges that unless he is furnished with a bill of particulars which said bill of particulars shall particularly and specifically inform him of the exact time when [138] said acts were committed, what particular place where said acts were committed and of the particular circumstances surrounding and comprising the commission of these acts, that he will be unable to properly prepare his defense to said indictment or to prepare any defense at all.

J. W. RANDOLPH.

SAMUEL H. ROBINSON.

Subscribed and sworn to before me this 7th day of May, 1928.

[Seal] VIVIAN M. HOOPS,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires February 10, 1930.

[Endorsed] Filed May 8, 1928. [139]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 21st day of May, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 21, 1928—ORDER DENYING MOTION FOR BILL OF PARTICULARS, ETC.

It is by the Court ordered that the motion of defendant Orton E. Goodwin to require the United States Attorney to furnish a list of witnesses be and the same is hereby denied; that the petition for severance by defendant Samuel H. Robinson and the motion for severance by defendant Orton E. Goodwin be and the same are hereby denied; that the motion of defendants J. W. Randolph and Samuel H. Robinson for bill of particulars be and

the same is hereby denied; that the motion of defendant Orton E. Goodwin for bill of particulars be and the same is hereby denied; and that the motion of defendant Harry M. Kassmir for bill of particulars be and the same is hereby denied. Ordered that the said defendants and each of them is hereby allowed an exception to the ruling of the Court. [140]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 29th day of May, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 29, 1928—TRIAL.

This case came on regularly this day for trial. The defendant Harry M. Kassmir was present in court in the custody of the U. S. Marshal and without an attorney; the defendants Samuel H. Robinson and J. W. Randolph were present with H. H. Harris, Esq., their attorney; the defendant Orton E. Goodwin was present with John A. McGee, Esq., his attorney. F. H. Ainsworth, Esq., was present as attorney for the defendant Cromwell Simon. Joseph L. Sweeney, Esq., George M. Naus, Esq., and Wm. A. O'Brien, Esq., Asst. U. S. Attys., were

present for and on behalf of United States. The defendants were called and each defendant answered to his name, excepting the defendant Cromwell Simon. The defendant Cromwell Simon was thereupon called by the United States Marshal and said defendant having failed to respond to his name, upon motion of Mr. Naus, it is ordered that the New Amsterdam Casualty Company produce the body of the defendant Cromwell Simon, and the said New Amsterdam Casualty Company having failed to produce the body of said defendant, IT IS ORDERED that the bond of said defendant Cromwell Simon be and the same is hereby forfeited unto the United States [141] of America, and that a writ of attachment issue for the arrest of said defendant Cromwell Simon. On motion of Mr. Harris, it is ordered that Robert B. McMillan, Esq., be and he is hereby substituted as attorney for the defendant Samuel H. Robinson in place and stead of H. H. Harris, Esq. Now comes James M. Hanley, Esq., and advised the Court that the defendant Harry M. Kassmir is without an attorney and moved the Court to continue the trial of this case. Mr. Harris, on behalf of the defendant J. W. Randolph, moved the Court to continue the trial of this case. Now comes Leo Friedman, Esq., and made a statement to the Court, and made a motion to be allowed to withdraw as attorney for the defendant Harry M. Kassmir. Harry M. Kassmir was sworn and testified on his behalf in support of the motion for a continuance. After hearing the attorneys, it is ordered that the motions of the defendants

Harry M. Kassmir and J. W. Randolph for a continuance of the trial of this case be and the same are hereby denied. Further ordered that Leo Friedman, Esq., be and he is hereby allowed to withdraw as attorney for the defendant Harry M. Kassmir. Ordered that Fred McDonald, Esq., be and he is hereby appointed as attorney for the defendant Harry M. Kassmir. Thereupon the Court ordered that this case do now proceed to trial. Thereupon the following persons, viz.:

1. Frank Paul,	7. J. E. Baker,
2. Fred'k F. Wright,	8. Stuart McMartin,
3. Louis E. Allen,	9. Leslie E. Alt,
4. George T. Morris,	10. A. E. Lisbon,
5. Chas. H. Moody,	11. Chas. W. Goodwin,
6. Thos. M. Jennings,	12. Richard W. Burke,

twelve good and lawful jurors, were, after being examined under oath, sworn to try the issues joined herein. Ordered that the further trial hereof be continued until Thursday, May 31, 1928, at 10 A. M., and the jury, after being duly admonished by the Court, were excused until that time. [142]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 31st day of May, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 31, 1928—TRIAL
(RESUMED).

The defendants, Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein, being present as heretofore, the trial hereof was thereupon resumed. Ordered that all witnesses be and they are hereby excluded from the courtroom during the trial of this case. Mr. Sweeney made a statement to the Court and jury on behalf of the United States. Mrs. Emily A. Beans, Charles Burke, E. H. Beemer and Howard C. Ellis were sworn and testified on behalf of United States. The United States introduced in evidence and filed its exhibits marked Nos. 1, 2, 3, 4, 5, 6, 7 and 8. Ordered that the further trial hereof be continued to 10 A. M. to-morrow and the jury, after being admonished by the Court, was excused until that time. [143]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 1st day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 1, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial hereof was thereupon resumed. Howard C. Ellis was recalled and V. A. Parks, Mary Christensen, Letitia W. McClintock, Robert Pigott were sworn and testified on behalf of United States. The United States introduced in evidence and filed its exhibits marked Nos. 9, 10, 11, 12, 13, 14, 15 and 16. Ordered that the further trial hereof be continued to 10:30 A. M. to-morrow. The jury, after being admonished by the Court, was excused until that time. [144]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 2d day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 2, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial was resumed. Robert Pigott and Mary Christensen were recalled and Gustave A. Johnson and J. A. Bardin were sworn and testified on behalf of the United States. The United States introduced in evidence and filed its exhibits marked Nos. 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26. Ordered that the further trial hereof be continued until Monday, June 4, 1928, at 2 P. M., and the jury, after being admonished by the Court, was excused until that time. [145]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 4th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 4, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H.

Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial hereof was thereupon resumed. LeRoy F. Pike was sworn and testified on behalf of United States. The United States introduced in evidence and filed its exhibits marked Nos. 27, 28 and 29. Ordered that the further trial hereof be continued to 10 A. M. to-morrow, and the jury, after being duly admonished by the Court, was excused until that time. 146]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 5th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 5, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial hereof was thereupon resumed. LeRoy F. Pike and Gustave A. Johnson were recalled and Mrs. Tess Belford and Mrs. Annie G. Tiger were sworn and testified on behalf of the United States. The United States

introduced in evidence and filed its exhibits marked Nos. 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49. The defendant J. W. Randolph introduced in evidence and filed his exhibit marked Defendant Randolph's Exhibit "A."

Court ordered further trial continued to 10 A. M. to-morrow and the jury, after being admonished by the Court, was excused until that time. [147]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 6th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 6, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial hereof was thereupon resumed. On motion of F. H. Ainsworth, Jr., it is ordered that he be and he is hereby allowed to withdraw as attorney for defendant Cromwell Simon. Ernest Hipp and Clara Oliver were sworn and testified on behalf of the United States. The United States introduced in evidence and filed its

exhibits marked Nos. 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, and 79. Ordered that the further trial hereof be continued to 10 A. M. tomorrow, and the jury, after being duly admonished by the Court, was excused until that time. [148]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 7th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 7, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein, being present as heretofore, the trial hereof was thereupon resumed. V. A. Parks and Mary Christensen were recalled and Bernhard Kellman, Van Mater Smith, Herbert D. McCaffrey, W. F. Allen, John Cummings, Joseph M. Kane, P. A. Nagan, George Bernard and Mary Esther Durham were sworn and testified on behalf of United States. The United States introduced in evidence and filed

its exhibits marked Nos. 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 90. Defendants introduced in evidence and filed their exhibit marked Defendants' Exhibit "B." Ordered that the further trial hereof be continued to 10 A. M. to-morrow and the jury, after being admonished by the Court, was excused until that time. [149]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 8th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 8, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial hereof was thereupon resumed. Mary Esther Durham was recalled and John J. Allen, Jr., was sworn and testified on behalf of the United States. The United States introduced in evidence and filed its exhibits marked Nos. 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105. On the cross-examination of

Mary Esther Durham, the defendant J. W. Randolph introduced in evidence and filed his exhibits marked Defendant Randolph's Exhibits "C," "D," "E," "F" and "G." Ordered that the further trial hereof be continued until 10:30 A. M. to-morrow, and the jury, after being admonished by the Court, were excused until that time. [150]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 9th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 9, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial hereof was thereupon resumed. Mary Esther Durham was recalled and M. I. Henderson, Sam Goodman, Edward McClintock, W. C. Owen and Wm. I. Madeira were sworn and testified on behalf of the United States. The United States introduced in evidence and filed its exhibits marked Nos. 106, 107, 108 and 109. Or-

dered that the further trial hereof be continued until Tuesday, June 12th, 1928, at 10:30 A. M., and the jury, after being admonished by the Court, was excused until that time. [151]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 12th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 12, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury being present as heretofore, the trial hereof was thereupon resumed. William I. Madeira was recalled and F. W. Lauck was sworn and testified on behalf of the United States. The United States introduced in evidence and filed its exhibits marked Nos. 110 and 111. On motion of J. L. Sweeney, Esq., Asst. U. S. Atty., it is ordered that Count No. 34 of the indictment be and the same is hereby dismissed. Thereupon the United States rested. Mr. McGee made a motion to instruct the jury to return a verdict of Not

Guilty as to the defendant Orton E. Goodwin, which said motion was ordered denied, and defendant allowed an exception. Mr. McMillan made a motion to instruct the jury to return a verdict of Not Guilty as to the defendant Samuel H. Robinson, which said motion was ordered denied and defendant allowed an exception. Mr. Harris made a motion to instruct the jury to return a verdict of Not Guilty as to the defendant J. W. Randolph, which said motion was ordered denied and defendant allowed an exception. Mr. McDonald made a motion to instruct the jury to return a [152] verdict of Not Guilty as to the defendant Harry M. Kassmir, which said motion was ordered denied and defendant allowed an exception. Mr. Harris made a statement to the Court and jury on behalf of the defendant J. W. Randolph. R. S. Creuss and F. B. Paddock were sworn and testified on behalf of defendant J. W. Randolph.

Court ordered that the further trial hereof be continued to 10:15 A. M. to-morrow and the jury, after being admonished by the Court, was excused until that time. [153]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 13th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 13, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial hereof was thereupon resumed. Sam Goodman and Herbert D. McCaffrey were recalled and Kenneth Sim, Carl S. Kely, Ernest F. Peterson and Orton E. Goodwin were sworn and testified on behalf of the defendant Orton E. Goodwin. The defendant Orton E. Goodwin introduced in evidence and filed his exhibits marked "A," "B" and "C." V. A. Parks was recalled and testified on behalf of defendant J. W. Randolph. Harry M. Kassmir was sworn and testified on his own behalf. Ordered that the further trial hereof be continued until 10 A. M. to-morrow, and the jury, after being admonished by the Court, was excused until that time. [154]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 14th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 14, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein, being present as heretofore, the trial hereof was thereupon resumed. Harry M. Kassmir was recalled and Alex Tasloff was sworn and testified on behalf of defendant Harry M. Kassmir; and the defendant Harry M. Kassmir thereupon rested. J. W. Randolph was sworn and testified on his own behalf. Maynard Dixon was sworn and testified on behalf of defendant Orton E. Goodwin. C. F. Tramutolo was sworn and testified on behalf of defendant Samuel H. Robinson. Court ordered further trial hereof continued to 10 A. M. to-morrow, and the jury, after being admonished by the Court, was excused until that time. [155]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 15th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 15, 1928—TRIAL
(RESUMED).

The defendant Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial hereof was this day resumed. J. W. Randolph was recalled and further testified on his own behalf. On cross-examination of J. W. Randolph, the United States introduced in evidence and filed its exhibit marked No. 112.

Thereupon all of the defendants rested, and the evidence was closed.

Mr. McMillan made a motion to instruct the jury to return a verdict of Not Guilty as to the defendant Samuel H. Robinson; Mr. McGee made a motion to instruct the jury to return a verdict of not guilty as to the defendant Orton E. Goodwin; Mr. Harris made a motion to instruct the jury to return a verdict of not guilty as to the defendant J. W. Randolph; and Mr. McDonald made a motion to instruct the jury to return a verdict of not guilty as to the defendant Harry M. Kassmir. After hearing the attorneys, it is ordered that said motions be and the same are hereby submitted. [156]

Court ordered the further trial hereof be continued to Tuesday, June 19, 1928, at 10 o'clock A. M., and the jury, after being admonished by the Court, was excused until that time. [157]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 19th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 19, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the attorneys and the jury impaneled herein being present as heretofore, the trial hereof was thereupon resumed. It is ordered that the motions of the defendants Harry M. Kassmir, Samuel H. Robinson and J. W. Randolph to instruct the jury to return a verdict of Not Guilty be and the same are hereby denied; to which ruling of the Court each of said defendants duly excepted.

It is ordered that the motion of the defendant Orton E. Goodwin to instruct the jury to return a verdict of Not Guilty be and the same is hereby granted.

Thereupon the attorneys made their arguments to the Court and jury and at the conclusion of said arguments, it is ordered that the further trial hereof be continued to 10 A. M. to-morrow, and the jury,

after being admonished by the Court, was excused until that time. [158]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 20th day of June, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable HAROLD LOUDERBACK, Judge.

[Title of Cause.]

MINUTES OF COURT—JUNE 20, 1928—TRIAL
(RESUMED).

The defendants Harry M. Kassmir, Samuel H. Robinson, Orton E. Goodwin and J. W. Randolph, the jury impaneled herein and all of the attorneys for the respective parties were present, excepting H. H. Harris, Esq., attorney for the defendant J. W. Randolph. Thereupon the Court ordered the Bailiff to call the name of H. H. Harris, Esq., and the Bailiff accordingly called the name of said H. H. Harris, Esq., and received no response until 10:30 A. M. After hearing H. H. Harris, Esq., it is ordered that said H. H. Harris, Esq., be and he is hereby adjudged guilty of contempt of this court for failure to be present at the convening of this court, and that he pay a fine in the sum of One Hundred (\$100.00) Dollars, and in default of the payment of said fine that the said H. H.

Harris, Esq., be committed into the custody of the United States Marshal until said fine is paid or he is otherwise discharged by due process of law.

Thereupon the further trial of this case was proceeded with. After the instructions of the Court to the jury, the jury, at 11:05 A. M., retired to deliberate upon their verdict. [159]

IT IS ORDERED that the U. S. Marshal for this District furnish meals to the jury and two bailiffs.

At 2:50 P. M., the jury returned into court and being asked if they had agreed upon their verdicts, replied in the affirmative and returned the following verdicts, which were ordered recorded, viz.:

“We, the Jury, find Harry M. Kassmir, the defendant at the bar, guilty on all counts.

L. E. ALT,
Foreman.”

“We, the Jury, find J. W. Randolph, the defendant at the bar, guilty on all counts.

L. E. ALT,
Foreman.”

“We, the Jury, find Samuel H. Robinson, the defendant at the bar, guilty on Counts Nos. 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38.

L. E. ALT,
Foreman.”

“We, the Jury, find Orton E. Goodwin, the defendant at the bar, not guilty on all counts.

L. E. ALT,
Foreman.”

The jury upon being asked if said verdicts as recorded are their verdicts, each juror replied that they are. Ordered that the jury be discharged from the further consideration hereof.

Mr. McDonald made a motion for a new trial and a motion in arrest of judgment, on behalf of defendant Harry M. Kassmir, which said motions were ordered denied and defendant allowed an exception.

Mr. McMillan made and filed a motion for a new trial and made and filed a motion in arrest of judgment, on behalf of defendant Samuel H. Robinson, which said motions were ordered denied, and defendant allowed an exception. [160]

Mr. Harris made and filed a motion for a new trial and made and filed a motion in arrest of judgment, on behalf of defendant J. W. Randolph, which said motions were ordered denied, and defendant allowed an exception.

Defendants were duly called for judgment, duly informed by the Court of the nature of the indictment filed herein against them, of their arraignment, and pleas of Not Guilty; of their trial and the verdict of the jury. Defendants were then asked if they had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment; thereupon the Court ordered that

Defendant HARRY M. KASSMIR be imprisoned in a U. S. Penitentiary for the period of

5 years and pay a fine in sum of \$500.00 as to the 2d Count; that he be imprisoned for the period of 5 years and pay a fine in sum of \$500.00 as to the 3d Count; and in default of the payment of said fine defendant be further imprisoned until said fine is paid or he be otherwise discharged by due process of law; and that he be imprisoned on each of the remaining counts on which he was convicted for the period of 5 years, all of said terms of imprisonment to run concurrently. Further ordered that said term of imprisonment commence and run from January 10, 1928, provided said defendant does not appeal or be released from custody on bond.

ORDERED that defendant SAMUEL H. ROBINSON be imprisoned in a U. S. Penitentiary for the period of 1 year and 1 day as to the 25th Count, and he be imprisoned on each of the remaining counts on which he was convicted for the period of 1 year and 1 day, all of said terms of imprisonment to run concurrently. [161]

ORDERED that defendant J. W. RANDOLPH be imprisoned in a U. S. Penitentiary for the period of 4 years and pay a fine in sum of \$500.00 as to the 2d Count; that he be imprisoned for the period of 4 years and pay a fine in sum of \$500.00 as to the 3d Count, and in default of payment of fine defendant be further imprisoned until said fine is paid or he be otherwise discharged by due process of law; and that he be imprisoned on each of the remaining counts on which he was convicted for the period of 4 years, all of said terms of imprisonment to run concurrently.

ORDERED that said defendant stand committed to custody of U. S. Marshal for this District to execute said judgments, and that commitments issue accordingly.

ORDERED that defendant ORTON E. GOODWIN be and he is hereby discharged, and that the bond of said defendant be exonerated and the sureties thereon discharged. [162]

[Title of Court and Cause.]

VERDICT (SAMUEL ROBINSON).

We, the jury, find Samuel H. Robinson, the defendant at the bar, guilty on Counts Nos. 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38.

L. E. ALT,
Foreman.

[Endorsed]: Filed June 20, 1928, at 2 o'clock and 50 min. P. M. [163]

[Title of Court and Cause.]

VERDICT (J. W. RANDOLPH).

We, the jury, find J. W. Randolph, the defendant at the bar, guilty on all counts.

L. E. ALT,
Foreman.

[Endorsed]: Filed June 30, 1928, at 2 o'clock and 50 minutes P. M. [164]

[Title of Court and Cause.]

MOTION OF SAMUEL H. ROBINSON FOR
NEW TRIAL.

Now comes the above-named defendant, Samuel H. Robinson, by his attorney, R. B. McMillan, and moves the Court to set aside the verdict herein and to grant a new trial, and as reasons therefor show to the Court the following:

I.

The Court erred in overruling said defendant's demurrer to the indictment and each count thereof.

II.

The Court erred in denying said defendant's motion for severance of trial on file herein.

III.

The verdict is contrary to the law of the case.

IV.

The verdict is not supported by the evidence in the case.

V.

The Court upon the trial of the case admitted incompetent [165] evidence offered by the United States.

VI.

The Court upon the trial of the case excluded competent evidence offered by said defendant.

VIII.

That in the testimony it does not affirmatively or otherwise appear that the above-entitled court had

jurisdiction over the offenses, or any of them, alleged in the indictment, in this, that there is no proof that the alleged offenses, or any of them, were or was committed within the jurisdiction of the above-entitled court.

IX.

That the Court improperly instructed the jury to the substantial prejudice of said defendant.

X.

That the Court improperly refused, to the substantial prejudice of said defendant, to give correct instructions on the law tendered by said defendant.

XI.

The Court erred in refusing to direct a verdict of Not Guilty at the close of the evidence of the United States.

XII.

The Court erred in refusing to direct a verdict of Not Guilty at the close of all the evidence.

Dated, San Francisco, California, June —, 1928.

R. B. McMILLAN,
Attorney for Said Defendant Samuel H. Robinson.

[Endorsed]: Filed June 20, 1928. [166]

[Title of Court and Cause.]

MOTION OF SAMUEL H. ROBINSON IN ARREST OF JUDGMENT.

And now after verdict against the above-named defendant, Samuel H. Robinson, and before sentence, comes the said defendant in his own proper person and by his attorney, R. B. McMillan, and moves the Court here to arrest judgment herein and not pronounce the same, for the following reasons, to wit:

I.

That the indictment, and each count thereof, in this cause does not state facts sufficient to constitute a public offense under the laws of the United States against the said defendant.

II.

That it appears from the record in the above-entitled cause that the judgment, if made and entered, would be unlawful. [167]

III.

And this defendant further specifies as grounds for this motion in arrest of judgment each and every ground contained and set forth in the demurrer of this defendant on file in this cause.

IV.

That it appears from the record and testimony in the above-entitled cause that the Court erred in denying the motion of said defendant for severance of trial, on file herein.

V.

That in the testimony it does not affirmatively or otherwise appear that the above-entitled court had jurisdiction over the offenses, or any of them, alleged in the indictment, in this, that there is no proof that the alleged offenses, or any of them, were or was committed within the jurisdiction of the above-entitled court.

VI.

That the indictment, and each and every count thereof, is not sufficient in form or substance to enable this defendant to plead the judgment in bar of another prosecution for the same offense.

WHEREFORE, because of which said errors in the record herein no lawful judgment can be rendered by the Court, the said defendant prays that this Honorable Court arrest and withhold the judgment herein, and that the verdict herein be vacated and set aside and declared null and void.

R. B. McMILLAN,

Attorney for Defendant Samuel H. Robinson.

Dated: San Francisco, California, June —, 1928. [168]

[Endorsed]: Filed June 20, 1928. [169]

[Title of Court and Cause.]

MOTION OF J. W. RANDOLPH FOR NEW TRIAL.

Now comes the above-named defendant, J. W. Randolph, by his attorney, H. H. Harris, and moves

the Court to set aside the verdict herein and to grant a new trial, and as reasons therefor shows to the Court the following:

I.

The Court erred in overruling said defendant's demurrer to the indictment and each count thereof.

II.

The verdict is contrary to the law of the case.

III.

The verdict is not supported by the evidence in the case.

IV.

The Court, upon the trial of the case, admitted incompetent evidence offered by the United States.

V.

The Court, upon the trial of the case, excluded competent evidence offered by said defendant.

VI.

That in the testimony it does not affirmatively or [170] otherwise appear that the above-entitled court had jurisdiction over the offenses, or any of them, alleged in the indictment, in this, that there is no proof that the alleged offenses were, or any of them was, committed within the jurisdiction of the above-entitled court.

VII.

That the Court improperly instructed the jury to the substantial prejudice of said defendant.

VIII.

That the Court improperly refused, to the sub-

stantial prejudice of said defendant, to give correct instructions on the law tendered by said defendant.

IX.

The Court erred in refusing to direct a verdict of Not Guilty at the close of the evidence of the United States.

X.

The Court erred in refusing to direct a verdict of Not Guilty at the close of all the evidence.

Dated: San Francisco, California, June 20, 1928.

H. H. HARRIS,

Attorney for Said Defendant J. W. Randolph.

[Endorsed]: Filed June 20, 1928. [171]

[Title of Court and Cause.]

MOTION OF J. W. RANDOLPH IN ARREST
OF JUDGMENT.

And now after verdict against the above-named defendant, J. W. Randolph, and before sentence, comes the said defendant in his own proper person and by his attorney, H. H. Harris, and moves the Court here to arrest judgment herein and not pronounce the same, for the following reasons, to wit:

I.

That the indictment, and each count thereof, in this cause does not state facts sufficient to constitute a public offense under the laws of the United States against the said defendant.

II.

That it appears from the record in the above-entitled cause that the judgment, if made and entered, would be unlawful.

III.

And this defendant further specifies as grounds for this motion in arrest of judgment each and every ground [172] contained and set forth in the demurrer of this defendant on file in this cause.

IV.

That in the testimony it does not affirmatively or otherwise appear that the above-entitled court had jurisdiction over the offenses, or any of them, alleged in the indictment, in this, that there is no proof that the alleged offenses, or any of them, were or was committed within the jurisdiction of the above-entitled court.

V.

That the indictment, and each and every count thereof, is not sufficient in form or substance to enable this defendant to plead the judgment in bar of another prosecution for the same offense.

WHEREFORE, because of which said errors in the record herein no lawful judgment can be rendered by the Court, the said defendant prays that this Honorable Court arrest and withhold the judgment herein, and that the verdict herein be vacated and set aside and declared null and void.

H. H. HARRIS,

Attorney for Defendant J. W. Randolph.

Dated: San Francisco, California, June 20th,
1928.

[Endorsed]: Filed June 20, 1928. [173]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 19217.

Convicted Violation of Section 215, Criminal Code of the United States.

THE UNITED STATES OF AMERICA

vs.

SAMUEL H. ROBINSON.

JUDGMENT ON VERDICT OF GUILTY—
COUNTS NOS. 25, 26, 27, 28, 29, 30, 31, 32, 35,
36, 37, 38.

Joseph L. Sweeney, Assistant United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the indictment filed on the 21st day of February, 1928, charging him with the crime of violation of Section 215, Criminal Code of the United States; of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 20th day of June, 1928, to wit:

We, the jury, find Samuel H. Robinson, the defendant at the bar, guilty on Counts Nos. 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38.

L. E. ALT,
Foreman.

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment; thereupon the Court rendered its judgment: THAT, WHEREAS, the said SAMUEL H. ROBINSON having been duly convicted in this court of the crime of violation of Section 215, Criminal Code of the United States,—

IT IS THEREFORE ORDERED AND ADJUDGED that the said SAMUEL H. ROBINSON be imprisoned in a United States penitentiary [174] for the period of ONE (1) YEAR and ONE (1) DAY, as to the 25th count of the indictment, and that on each of the remaining counts on which he stands convicted that he be imprisoned in a United States Penitentiary for the period of ONE (1) YEAR and ONE (1) DAY; said terms of imprisonment to run concurrently.

Judgment entered this 20th day of June, A. D. 1928.

WALTER B. MALING

Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 23 Judg. and Decrees, at Page
53. [175]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 19217.

Convicted Violation of Section 215, Criminal Code
of the United States.

THE UNITED STATES OF AMERICA

vs.

J. W. RANDOLPH.

JUDGMENT ON VERDICT OF GUILTY—ALL
COUNTS.

Joseph L. Sweeney, Assistant United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the indictment filed on the 21st day of February, 1928, charging him with the crime of violation of Section 215, Criminal Code of the United States; of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 20th day of June, 1928, to wit:

We, the jury, find J. W. Randolph, the defendant at the bar, guilty on all counts.

L. E. ALT,

Foreman.

The defendant was then asked if he had any legal cause to show why judgment should not be entered

herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment; thereupon the Court rendered its judgment: THAT, WHEREAS, the said J. W. RANDOLPH having been duly convicted in this court of the crime of violation of Section 215, Criminal Code of the United States,— [176]

IT IS THEREFORE ORDERED AND ADJUDGED that the said J. W. RANDOLPH be imprisoned in a United States Penitentiary for the period of Four (4) Years and pay a fine in the sum of Five Hundred (\$500.00) Dollars as to the Second Count of the indictment; that he be imprisoned for the period of Four (4) Years and pay a fine in the sum of Five Hundred (\$500.00) Dollars as to Third Count of the indictment; that on each of the remaining counts of the indictment on which he stands convicted that he be imprisoned for the period of Four (4) years; said terms of imprisonment to run concurrently; further ordered that in default of the payment of said fine that said defendant be further imprisoned until said fine be paid or until he be otherwise discharged in due course of law.

Judgment entered this 20th day of June, A. D. 1928.

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 23 Judg. and Decrees, at Page 54.
[177]

[Title of Court and Cause.]

NOTICE OF APPEAL (SAMUEL H. ROBINSON AND J. W. RANDOLPH).

To the United States of America, Appellee, and
GEORGE J. HATFIELD, Esq., United States
Attorney in and for the Northern District of
California, as Attorney for Said Appellee:

You and each of you will please take notice that the above-named defendants, Samuel H. Robinson and J. W. Randolph, hereby appeal, and each hereby appeals, to the United States Circuit Court of Appeals, in and for the Ninth Circuit from the judgments entered in said cause against said defendants, and each of them, on June 20, 1928, and that the certified transcript of record will be filed in the said United States Circuit Court of Appeals within the time and as provided by law.

Dated, June 29, 1928.

JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
H. H. HARRIS,

Attorneys for Defendant J. W. Randolph,
Humboldt Bank Building, San Francisco. [178]

R. B. McMILLAN,
Attorney for Defendant Samuel H. Robinson,
1810 Russ Building, San Francisco.

Due service of the within notice of appeal and

receipt of a copy thereof hereby admitted this 29 day of June, 1928.

GEO. J. HATFIELD,
J. L. SWEENEY,
Attorneys for U. S.

[Endorsed]: Filed Jun. 29, 1928. [179]

[Title of Court and Cause.]

PETITION FOR APPEAL AND SUPERSEDEAS.

Now come the above-named defendants, Samuel H. Robinson and J. W. Randolph, through their attorneys (R. B. McMillan for defendant Samuel H. Robinson) and (James B. O'Connor, H. H. Harris, and Harold C. Faulkner, for the defendant J. W. Randolph), and feeling themselves, and each feeling himself, aggrieved by the judgments of this Court made and entered June 20, 1928, in the above-entitled cause, wherein and whereby these defendants are sentenced to be imprisoned and to pay fines as set forth in the judgments made and entered by the Court in said cause, to which judgments reference is hereby made for greater particularity, your petitioners say that they, and each of them, are advised by their counsel, and therefore that they aver, that there was and is manifest error in the record and proceedings had in said cause, and in the making, rendition and entry of said judgments and sentences, and each of them, to the injury and damage of your petitioners, and each of your peti-

tioners, all of which errors may be fully made to appear by an examination of the assignment of errors and the bill of exceptions [180] filed herein and presented herewith.

And hereby petition this Honorable Court for an appeal herein to the United States Circuit Court of Appeals in and for the Ninth Circuit, and that a full, true and correct transcript of the record and proceedings in said cause be transmitted by the Clerk of this Court to the Clerk of the said United States Circuit Court of Appeals; and that during the pendency of this appeal all proceedings had by this Court be suspended, stayed and superseded, and that during the pendency of said appeal the said defendants, and each of them, be admitted to bail in such sum or sums as to this Court seems meet and proper.

Dated, San Francisco, California, June 29, 1928.

JAMES B. O'CONNOR,

H. H. HARRIS,

HAROLD C. FAULKNER,

Attorneys for Defendant J. W. Randolph.

R. B. McMILLAN,

Attorney for Defendant Samuel H. Robinson.

Due service of the within petition and receipt of a copy thereof hereby admitted this 29 day of June, 1928.

GEO. J. HATFIELD,

J. L. SWEENEY,

Attorneys for U. S.

[Endorsed]: Filed Jun. 29, 1928. [181]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Samuel H. Robinson and J. W. Randolph, defendants in the above-entitled cause, and plaintiffs on appeal herein, having petitioned for an order from said court permitting them, and each of them, to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, from the judgments and sentences entered in the above-entitled cause against said Samuel H. Robinson and J. W. Randolph, and said defendants having duly given notice of appeal as provided by law, now make and file with their said petition for appeal the following assignment of errors herein, upon which they and each of them will apply for a reversal of said judgments and sentences, and each of them, upon appeal, and which said errors, and each of them, are to the great detriment, injury and prejudice of said defendants, and each of them, and in violation of the rights conferred upon him by law; and each of said defendants says that in the record and proceedings in the [182] above-entitled cause, upon the hearing and determination thereof, in the Southern Division of the United States District Court for the Northern District of California, there is manifest error in this, to wit:

I.

That the above-entitled court erred, to the substantial prejudice of said defendants, and each of them, in overruling the demurrer of said defend-

ants to the indictment herein. That a copy of said demurrer is set forth at length in the bill of exceptions (Exception No. 1) filed herewith, to which special reference is hereby made as the same is made a part hereof.

II.

That the above-entitled court erred, to the substantial prejudice of said defendants, and each of them, in overruling the demands for bill of particulars of said defendants to the indictment herein. That a copy of said demands is set forth at length in the bill of exceptions (Exception No. 2) filed herewith, to which exception reference is hereby made as the same is made a part hereof.

III.

That the above-entitled court erred, to the substantial prejudice of said defendants, and each of them, in overruling petition for severance of said defendant Samuel H. Robinson. That a copy of said petition is set forth at length in the bill of exceptions (Exception No. 3) filed herewith, to which special reference is hereby made as the same is made a part hereof.

IV.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

I reside in Oakland, 608 Excelsior Boulevard, and during the year 1925 resided at 5838 Birch Court, which was my own [183] house. I know the defendants J. W. Randolph, Harry Kassmir and Samuel H. Robinson. (Witness here identifies said

three defendants in the courtroom.) I doubt if I would recognize Ortin E. Goodwin; I never met him, I think but once. The defendant, Cromwell Simon, who is not here, I know; I met him two times. Met Mr. Randolph some time during the early part of the year 1925; he came to my house, I am not sure whether it was by appointment, or not, but he came to my house, and we talked along socially for a little bit, and then he finally broached the subject; he said that he would like to help me to make back some of the money that he had caused me to lose in the Nabisco Company, and he said, "Haven't you got some stock laying around here that is not paying any money only dividends"? and I said, "Why, yes, I have got some stock, but I don't know whether I want to let it go or not," and he explained to me how he could take those stocks and put them in Cromwell Simon and have them pay me good money; let them lay in Cromwell Simon's vault as collateral, and then they would buy me some stock, whatever I wanted, Hudson, or Studebaker, whatever I might see fit, and be earning a little money for me; prior to this visit I had some business dealings with Mr. Randolph—I bought Georgie Fruit Company, and lost considerable money on that transaction.

EXCEPTION No. 4.

Mr. McMILLAN.—May it be understood that I object to that testimony upon the ground that so far as the defendant Robinson is concerned it is too remote, incompetent, and hearsay.

The COURT.—Will you connect this up with this matter?

Mr. SWEENEY.—It is just a matter of identification of Mr. Randolph, and showing the entree that Mr. Randolph had to this lady.

Mr. SWEENEY.—I will offer to connect it up, if I do not [184] connect it up it will be ruled out.

The COURT.—Connect it up as a part of the case, or simply as identification?

Mr. SWEENEY.—I will have to stand on my former statement, just as a matter of identification.

The COURT.—It will be received for that purpose, and only for that limited purpose, and the objection will be overruled.

Mr. McMILLAN.—May we respectfully note an exception?

The COURT.—Yes.

WITNESS.—(Continuing.) During Mr. Randolph's first visit in March, 1925, I did not give him any stocks; my stocks were at Berkeley in the safe deposit vault, but I agreed to get them out and he was to come over again and see the stock. I got the stock home, and Mr. Randolph came up by appointment; he came alone. This second visit was along in the latter part of March, 1925; I cannot fix the date; I have tried to forget the whole transaction. Only myself and Mr. Randolph present.

V.

That the Court erred in admitting in evidence

certain testimony over the objection of defendants, as will more fully appear as follows:

Q. What was the conversation you had with Mr. Randolph at that time?

Mr. McMILLAN.—So far as the defendant Robinson is concerned, that is objected to on the ground it is hearsay, and is *res inter alios acta*.

Mr. SWEENEY.—It is all part of one scheme.

The COURT.—The objection will be overruled.

Mr. McMILLAN.—Note an exception.

(That the evidence admitted over the foregoing objection [185] and under the ruling of the Court is fully set forth in the bill of exceptions (Exception No. 5) filed herewith, to which special reference is hereby made as the same is made a part hereof.)

VI.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Q. Now, can you tell us more definitely the conversation you had with Mr. Kassmir on that occasion?

Mr. HARRIS.—That is objected to on the ground there is no foundation laid yet; I only want all of the parties present.

Mr. SWEENEY.—Who was present at that time?

A. Just Cromwell Simon, and I do not think he was in the room all the while.

Q. Who else? A. Mr. Kassmir.

Mr. McMILLAN.—I ask leave at this time, so that my objection will appear clearly in the record—

I make an objection on behalf of the defendant Samuel Robinson, first that this testimony is too remote so far as that defendant is concerned, that it is *res inter alios acta*, that it is hearsay, and, furthermore, they are seeking to bring in declarations and actions at a time that is remote to the charges contained in this indictment; this is not a conspiracy charge, but a charge under Section 215 of the Criminal Code, the 38 counts being based under that section, and they are substantive offenses, not any charge of conspiracy, and none of these statements, none of these situations, none of these conversations that the witness has related, in so far as the defendant Robinson is concerned, are in any way, shape, or form binding upon him, and hearsay, and incompetent, and your Honor will note from the opening statement of the District Attorney that Mr. Robinson had not even met these persons at that time. [186]

The COURT.—What have you to say to that?

Mr. SWEENEY.—Just this, that the Government is showing a scheme, and in the performance of that scheme admissions or statements made by one of the—I was going to say one of the conspirators—one of the persons, one of the defendants, binds the others, if it was for the purpose of furthering the scheme.

The COURT.—Your contention is the way of proving a scheme or artifice like this, that it is as proving a conspiracy?

Mr. SWEENEY.—Absolutely. If we can con-

nect Mr. Robinson up with this scheme at any time, he is responsible for everything.

The COURT.—Is it your theory that statements made by those engaged in the common design can be used against one another irrespective of whether there is a conspiracy or not?

Mr. SWEENEY.—If you will indulge me for a minute or so I will find it for you.

Mr. McMILLAN.—My further point is this, as far as my client is concerned, that he did not even know any of the parties at that time.

The COURT.—That goes to different points.

Mr. McMILLAN.—It is in line with what may be connected up.

The COURT.—We have the whole record to find out whether it is connected up, or not. I think that point has been pretty well covered, that at the present moment there is not in the record statements which connect up the parties who are on trial.

Mr. McMILLAN.—Furthermore, it is too remote, and *res inter alios acta*, and hearsay.

Mr. SWEENEY.—May I quote the syllabus from *U. S. vs. Belden*, found in 223 Fed. 726: (Reading.)

The COURT.—I will overrule the objection.

Mr. McMILLAN.—Note an exception. I move to strike [187] out all of the testimony of the witness so far as my client is concerned, and ask that it be limited only to those defendants which he has named.

The COURT.—The ruling on that would have to be made much later, but at this time, the Court, under the stand taken by the Court, will overrule the objection. I can see the possibility of that being reviewed at a later time.

Mr. McMILLAN.—May I note an exception, and have the privilege of renewing this motion?

The COURT.—The record will so show.

Mr. SWEENEY.—Q. Now, Mrs. Beans, would you tell us the conversation that you had with Mr. Kassmir in his office at the Mills Building when Mr. Cromwell Simon was present?

Mr. McDONALD.—Objected to on behalf of the defendant Kassmir, that it is immaterial, irrelevant, and incompetent, and not within the issues laid in the indictment.

The COURT.—Overruled.

Mr. McDONALD.—Exception.

Mr. HARRIS.—We adopt the objection made by Mr. McDonald.

The COURT.—The same ruling.

Mr. HARRIS.—Exception.

A. Mr. Kassmir explained to me about the business, how, in buying the stock, it was the partial payment plan, and that it would make it easier for me, and they could earn money, and I would not have to put in very much money, and in three months probably I could sell them and make quite a bit, and I finally consented to let it go on, and it went on.

Mr. SWEENEY.—Q. Mrs. Beans, was anything

said at that time with reference to the purchase of Studebaker stock?

A. Yes; they claimed they had already purchased it from me.

Only a few days after this Mr. Randolph and Mr. Kassmir [188] came to my home on Birch Court; I could not tell you the date, but it must have been in April, because as I say, I have tried to forget those things. Mrs. Durham, my niece, was present at the conversation at this time. Possibly, Mrs. Durham had been present at previous conversations had with these people, but I don't remember that they had ever been over before together.

VII.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Q. On that occasion, what was the substance of the conversation?

Mr. McGEE.—Objected to on behalf of the defendant Orton Goodwin, on the ground it is immaterial, irrelevant, and incompetent, and hearsay.

The COURT.—Overruled.

Mr. McGEE.—Exception.

Mr. McMILLAN.—That objection and exception is adopted by the defendant Robinson.

The COURT.—The same ruling.

We borrowed \$2,500.00 at the back; we talked it all over together about the borrowing money; whether they just said, "Go ahead and do it," or what, I don't know, or whether we said we would

do it, we did it. We borrowed \$2,500.00, and instructed them to buy Studebaker with it.

VIII.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Mr. SWEENEY.—Q. How did you borrow that \$2,500?

Mr. McGEE.—Objected to as immaterial, irrelevant, and [189] incompetent.

Mr. McMILLAN.—I adopt the objection.

The COURT.—Overruled.

Mr. McMILLAN.—Exception.

(That the evidence admitted over the foregoing objection and under the ruling of the Court is fully set forth in the bill of exceptions (Exception No. 8) filed herewith, to which special reference is hereby made as the same is made a part hereof.)

IX.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Mr. SWEENEY.—Q. What was the conversation, Mrs. Beans?

Mr. McMILLAN.—On behalf of the defendant Robinson I object to this testimony upon the ground that it is incompetent, that it is hearsay, that it is a transaction had between strangers, it is too remote, and it does not in any way, shape, or form show that Mr. Robinson was engaged in any joint enterprise or in any conspiracy, or in any manner, shape, or form aided, abetted, or assisted any of

the defendants charged in the indictment, and that this testimony sought to be elicited, as well as all previous testimony elicited from this witness, is not within any count of the indictment before the Court.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

Mr. Kassmir tried to have her get money from the east, and I would not want to use the words that he used, because she was not willing to pull her money out back east and bring it out here and place it with them and buy stock. Mr. Randolph was present. He tried to argue the point with her, and told her what [190] all he could do for her if she would bring her money here. He said he would build it up very wonderfully, made good promises, I could not tell definitely just what promises he made, but he made good promises about what he could do for her. I know Miss Durham did bring some money from the east; but I don't think I could tell approximately how much. She turned the money over to Mr. Kassmir to buy stock, and he was trying to look up something, that he felt very sure would go up, and at the same time he said, as he was putting it, he was keeping it up his sleeve quite a while, but bye-and-bye he would be ready to purchase the stock. They got the money, but I couldn't say how much.

X.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Mr. SWEENEY.—Q. To return, Mrs. Beans, to the conversation you had with reference to the \$2,500 incident; you recall that?

A. Yes.

Q. Can you remember any specific thing that Mr. Randolph said upon that occasion?

Mr. McGEE.—Objected to on the behalf of the defendant Goodwin on the ground it is immaterial, irrelevant, and incompetent, and not responding to any allegations in the indictment, and hearsay.

Mr. HARRIS.—We adopt the objection on behalf of the defendant Randolph.

Mr. McMILLAN.—We adopt that objection on behalf of the defendant Robinson.

The COURT.—Overruled.

Mr. McGEE.—Exception. [191]

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(That the evidence admitted over the foregoing objection and under the ruling of the Court is fully set forth in the bill of exceptions (Exception No. 10) filed herewith, to which special reference is hereby made as the same is made a part hereof.)

XI.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Just prior to that time, did you have another conversation with Mr. Randolph and Mr. Kassmir with reference to your stock.

Mr. McMILLAN.—That is objected to on behalf

of the defendant Robinson on all of the grounds heretofore stated, and for the same reasons.

The COURT.—Overruled.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. You may answer.

A. There came a time when the stocks were sort of hanging low, and so they came to us and wanted us to give up our stock, that is, let them use the money—they did not have any stocks, never did have—and let them use the money, and they would give us—they could use it to good advantage in their business, and they would give us \$200 a month while they used it, and then when the stock got good, then they would put it back in the stock. They took our money and they paid us \$200 a month for two months, and that was when the bank sprung up. So I was very anxious to have a little more than what I had, and offered to put a mortgage on my home of \$4,000.

XII.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully [192] appear as follows:

Mr. SWEENEY.—Q. Would you please tell us the conversation you had with Mr. Randolph and Mr. Kassmir relative to the mortgage on your house?

Mr. McGEE.—Objected to on behalf of the defendant Goodwin on all of the grounds heretofore stated.

Mr. McMILLAN.—The objections urged are adopted by the defendant Robinson.

The COURT.—I will overrule the objection.

Mr. McMILLAN.—Exception.

Mr. Kassmir said he would look after it for me, would take charge of it, and look after it, and he got it fixed up in Mr. Robinson's office, and we went there.

Mr. SWEENEY.—Q. Before you go there, will you tell us what conversation you had with these men when the subject of a \$4,000 mortgage was broached?

A. They were very pleased over it; I cannot just tell the words that were used.

Q. When you say they were very pleased, who have you reference to?

A. Mr. Kassmir and Mr. Randolph. Where we saw one we saw the other.

I mortgaged my home at that time. The papers relative to that mortgage were drawn up in Mr. Robinson's office and I went there and signed it. He was present. It was all ready for me to sign; I believe he did it, but I don't know who did it, but they were all ready to sign. I actually got the \$4,000, from a broker over in Oakland; and paid it over to Kassmir and Randolph.

XIII.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Q. Up to this time, Mrs. Beans, how much money had you and Miss [193] Durham given to Mr. Randolph or Mr. Kassmir, if you know, of your own knowledge?

Mr. McGEE.—I object to the question on behalf of the defendant Goodwin on all of the grounds stated in the previous objection.

Mr. McMILLAN.—I adopt the objection on behalf of the defendant Robinson.

Mr. HARRIS.—And on behalf of the defendant Randolph.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

A. Between us, my niece, Miss Durham, and myself, we put in \$12,056 into what they called their Reno bank.

XIV.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Mr. SWEENEY.—That is all with this witness at this time, your Honor.

Mr. McGEE.—Before any questions are asked of the witness on cross-examination, I move on behalf of the defendant Goodwin that the entire testimony of this witness be stricken from the record on the grounds previously outlined to your Honor.

Mr. SWEENEY.—We expect to connect it up with Mr. Goodwin.

The COURT.—The objection will be overruled.

Mr. McGEE.—Exception.

Mr. McMILLAN.—May we have the benefit of that motion and your Honor's ruling?

The COURT.—The same ruling.

Mr. McMILLAN.—We respectfully note an exception, your Honor. [194]

XV.

The Court erred in denying the motion of said defendants to strike out certain testimony, as will more fully appear as follows:

Mr. McGEE.—I move to strike from the record, on the grounds previously stated, first, that this lady, according to her testimony, parted with whatever value she parted with not on the basis of any letters received by her through the mail, but on the oral representations of Randolph and Kassmir, and that there is nothing in the testimony of this witness pointing to the allegation of the indictment that the mails were used to defraud; whether she was defrauded actually, or not, is not a question for this court. The question before this court and jury is whether she was defrauded through the use of the mails, and, according to the testimony of this witness, she was not defrauded by the use of the mails, but if she was defrauded at all it was by the oral representation made by Kassmir and Randolph; on the further ground, if your Honor please, in so far as the defendant Goodwin is concerned, that the testimony is hearsay, immaterial, irrelevant, and incompetent.

Mr. McMILLAN.—As to the defendant Robinson, we join in that motion in all respects.

Mr. HARRIS.—And the defendant Randolph joins in it, except as to the third specification.

The COURT.—It will be overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

XVI.

That the Court erred in admitting in evidence certain testimony over the objection of defendants. as will more fully appear as follows: [195]

Mr. SWEENEY.—Q. I will show you this and ask you if you can identify it.

A. I recognize it.

Mr. SWEENEY.—You are familiar with these, Mr. Harris?

Mr. HARRIS.—Those are the agent's licenses?

Mr. SWEENEY.—Yes, issued under the Cromwell Simon brokerage license.

Mr. HARRIS.—Yes, I have seen them.

Mr. SWEENEY.—At this time I want to offer in evidence as one exhibit the application of J. W. Randolph for authority to act as broker's agent, and the order, both of which are dated April 20, 1925, also a similar document for Orton E. Goodwin, J. Edward McClintock and W. Claude Owen.

Mr. McMILLAN.—On behalf of the defendant Robinson, I object to the introduction of these documents in evidence on the ground that there has been no showing whatever concerning his knowledge of the matters therein contained, they are in no way binding upon him, and, therefore, are incompetent as to him.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

XVII.

That the Court erred in admitting in evidence

certain testimony over the objection of defendants, as will more fully appear as follows:

Mr. SWEENEY.—Q. I will show you this, here, and ask you if you can identify that, Mr. Ellis (exhibiting to witness a document purporting to be a revocation of the license of Cromwell Simon & Co.).

A. I recognize that, yes.

Mr. SWEENEY.—At this time I wish to introduce this particular document in evidence. I think you, Gentlemen, are familiar with it:

Mr. McMILLAN.—Objected to on behalf of the defendant [196] Robinson on the ground that so far as he is concerned the proper foundation has not been laid, that it is hearsay, and incompetent.

Mr. HARRIS.—The same objection on behalf of the defendant Randolph, and the further objection that it is in no way binding upon him.

Mr. SWEENEY.—We will connect it up later on.

Mr. HARRIS.—Do I understand it is part of the case to have the license revoked?

Mr. SWEENEY.—No, it is not to have it revoked. It is part of this case to have it continued in force.

Mr. HARRIS.—The point I make is that no implication should be transferred to my client by the fact that Cromwell Simon & Company had their license revoked, and, therefore, it is immaterial, irrelevant, and incompetent as to him, and no foundation has been laid as to him.

The COURT.—I do not believe there has been any foundation laid to place it in evidence, even if

it was revoked. There is nothing to indicate they had notice of it. I think it can be received only for identification.

Mr. SWEENEY.—If a part of the scheme is to maintain the license of Cromwell Simon any effort made by them to retain that license is admissible in evidence, it is part of the *res gestae*, it is part of the whole scheme to defraud.

The COURT.—Do I understand that you hope to show that it was revoked, and that there was an attempt made later—

Mr. SWEENEY.—Not only that, but after that date—

The COURT.—Just a minute. Answer my question. Do I understand then you want to introduce the facts, if it is a fact, that there was a revocation, and subsequently they tried to have it set aside; is that what you are trying to show?

Mr. SWEENEY.—Yes. I will ask Mr. Ellis a question. [197]

Q. Mr. Ellis, was a copy of that mailed to the applicants? A. It was mailed.

The COURT.—I will sustain the objection. I cannot see the bearing of this document upon any possible issue in this case, unless it was brought to the knowledge of individuals involved. I do not think you have built up circumstantially, or by direct evidence, yet, that it was.

Mr. SWEENEY.—If it was mailed to the people interested, the presumption is it was received.

The COURT.—If it had been dropped into the postoffice box, I would concede your position.

Mr. SWEENEY.—If it had been mailed in the ordinary course of business conducted by a big organization or a big concern, it would be.

Mr. McGEE.—If you were attempting to prove the mailing of notices at the time of the probate of a will, or something of that kind, you would have to come in with an affidavit of the person mailing the notice; that is the only way you could prove it, by the person who mailed it. I submit that it is not admissible in evidence for two reasons previously stated, and on the further ground that no foundation has been laid that it was ever brought to the attention of the defendants, or of either of them.

The COURT.—I will sustain the objection. It will be received for identification.

Mr. SWEENEY.—Is the reason that it is not received in evidence because the Government has not yet proved it was properly mailed?

The COURT.—It has not been proved that it was properly mailed, or that it had come to the attention of the defendants.

Mr. SWEENEY.—In the record so far we have a decree by [198] Judge Deasy setting aside the injunction granted against the Corporation Commissioner for revoking their license, so we have already covered in the record that it must have been brought to their attention.

Mr. HARRIS.—It is still not brought to the attention of Randolph.

Mr. McGEE.—Nor brought to the attention of the defendant Goodwin.

The COURT.—I think that is a good point. The

objections heretofore made will be overruled, and it will be received in evidence.

Mr. McGEE.—Is it in evidence for all purposes against all the defendants—against the defendant Goodwin?

The COURT.—The Court has not made any exception in the ruling.

Mr. McGEE.—We note an exception.

Mr. HARRIS.—We note an exception as to the defendant Randolph.

Mr. McMILLAN.—And we note an exception as to the defendant Robinson.

(The document was marked U. S. Exhibit 7.)

XVIII.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Mr. SWEENEY.—Q. Mr. Ellis, you personally held this hearing on which this particular decree was predicated?

A. I personally conducted the hearing.

Q. Who was present at that hearing of the defendants, if you know?

A. Cromwell Simon and Harry M. Kassmir.

Q. At that hearing which one of the defendants took the stand? [199]

A. Cromwell Simon took the stand.

Q. Were certain exhibits offered by him in evidence at that time? A. There were.

Q. At this time I will show this letter and ask you if you can identify it. A. I do.

Q. When did you see that for the first time?

A. That was filed at that hearing.

Q. By whom?

A. March, 1925, by Cromwell Simon & Co.

Mr. SWEENEY.—At this time I ask that this be introduced in evidence and if it is accepted I will read it later.

Mr. McGEE.—Objected to on behalf of the defendant Goodwin on the ground that it is not binding on him, immaterial, irrelevant and incompetent, hearsay, secondary evidence, it not having been shown that Goodwin knew anything about its contents, no foundation has been laid.

Mr. SWEENEY.—It purports to be a financial statement of that concern on a particular date, filed by Cromwell Simon, in the presence of Harry M. Kassmir, at a hearing held by the Corporation Commissioner.

Mr. McMILLAN.—Held at what date?

Mr. SWEENEY.—On the date that Mr. Ellis testified to.

Mr. HARRIS.—It appears to be a summary of certain books, and nothing is shown that the defendant whom I represent, or any of the other defendants, had particular access to those books, or had the care or control of those books. That was exactly the point upon which the Doble case was reversed by the Supreme Court. They attempted to introduce a résumé of certain books just as they are doing here, and Judge Preston at that time held that by implication you could not hold a person responsible in that sort of fashion. If your Honor please, I have the decision here. [200]

The COURT.—I understand that, but I do not believe that it would support the defendants in this case.

Q. Who presented that at the hearing in behalf of the Cromwell Simon Company?

A. It was presented by both sides; it was stipulated by Cromwell Simon and Harry Kassmir that it might be used by both sides.

Q. Who spoke for the company?

A. Cromwell Simon, in that case.

Mr. HARRIS.—If your Honor please, with your Honor's permission I move to strike out the statement of the witness in response to your Honor's question on the ground that it is his conclusions, and not the best evidence, the record of the hearing being the best evidence.

The COURT.—Overruled.

Mr. McMILLAN.—We desire to adopt the objection of Mr. Harris, on behalf of the defendant Robinson.

Mr. SWEENEY.—At this time I offer it in evidence but I will not read it until later on.

Mr. HARRIS.—Exception.

XIX.

That the Court erred in admitting in evidence certain testimony over the objection of defendants, as will more fully appear as follows:

Mr. SWEENEY.—At this time I offer these purchase agreements in evidence, signed by L. M. McClintock.

Mr. McMILLAN.—On behalf of the defendant Robinson, the offer is objected to on the ground

the proper foundation has not been laid as to him, incompetent, irrelevant, not within the issues of this case, and hearsay as to him; and these purported agreements deal with a time when, as the defendant Robinson, under no possible theory of this case, would he be bound by these documents, or any of them. [201]

Mr. HARRIS.—On behalf of the defendant Randolph, I adopt the objection of the defendant Robinson.

The COURT.—You offer these as showing the activities of these men at that time?

Mr. SWEENEY.—Yes, and that they were subsequently adopted by Mr. Robinson when he entered into the scheme.

The COURT.—You also believe that the activities of this firm were for the purpose of this design?

Mr. SWEENEY.—It was the scheme, part of the scheme.

Mr. McMILLAN.—I ask that the statement of the District Attorney, when he subsequently entered the scheme, be stricken out, as there is no proof whatever he ever entered into any scheme.

The COURT.—The statements of counsel are not evidence, no matter what counsel may say, unless it is stipulated to. I will overrule the objection.

Mr. McMILLAN.—Note an exception.

Mr. HARRIS.—Note an exception.

(The purchase agreements are marked U. S. Exhibit 9.)

During that hearing I interrogated Mr. Cromwell

Simon concerning these purchase agreements.
[202]

XX.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. SWEENEY.—Q. Purchase agreement No. 1, “Herewith find money order or check for, as collateral, to apply as first payment on 100 shares of General Motors, Market, 100 shares of Studebaker, Market,”—I will ask you if you asked Mr. Cromwell Simon whether those stocks were bought, the date of that being February 25, 1925.

Mr. HARRIS.—We object to that as leading and suggestive, irrelevant, and immaterial, and not binding upon the defendant Randolph.

Mr. McMILLAN.—The defendant Robinson joins in the objection.

The COURT.—Overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. Do you have a record of that hearing in your hand?

A. I have.

Q. You have refreshed your memory from that record? A. I have.

Q. What was the answer of Cromwell Simon with reference to the purchase agreements?

A. That they had not purchased them.

Mr. HARRIS.—That is objected to as immaterial, irrelevant, and incompetent, hearsay, as far as the witness is concerned, because there is no foundation

laid showing that he made that memorandum, himself, and he testifies he refreshed his recollection from that memorandum, which is pure hearsay.

Mr. McMILLAN.—The same objection on behalf of the defendant Robinson.

The COURT.—Q. You have that in your hand. You just refreshed your memory?

A. I have not refreshed my memory recently [203] from this, but I recall and have read the transcript, however, in connection with this case.

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. You have an independent recollection of this transaction, also? A. I have.

Q. I will show you a purchase agreement marked “3,” which says, “Herewith find money order or check to apply as first payment on the following, 100 shares Marland Oil, market.” Do you recall asking Mr. Cromwell Simon at that time whether those shares were bought?

Mr. HARRIS.—We also object on the same grounds on behalf of the defendant Randolph.

Mr. McMILLAN.—The same objection on behalf of defendant Robinson.

The COURT.—Overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

A. Yes, we interrogated Cromwell Simon with regard to each one of these six, and to each one he replied that they had not purchased the security.

(That the evidence admitted over the foregoing objection and under the ruling of the Court is more fully set forth in the bill of exceptions (Exception No. 20) filed herewith, to which special reference is hereby made as the same is made a part hereof.)

XXI.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows: [204]

Q. Did Mr. Simon, at the date of that hearing, tell how much money he had taken out as his part of the profits of Cromwell Simon & Co.?

Mr. HARRIS.—Objected to on behalf of the defendant Randolph as leading and suggestive, and the grounds stated in the other objection. (Immaterial, irrelevant, and incompetent, and not binding upon him.)

Mr. SWEENEY.—The statement I was about to make is this, the contention of the Government is that the attempt of Cromwell Simon and Mr. Kassmir to continue their license in effect by the opposition to this hearing is a part of the scheme, because we state in the indictment that the obtaining and acting of Cromwell Simon & Co. under a broker's license is part of the scheme.

Mr. HARRIS.—Our contention is that in order to do that the Government does not have to lead as adept a witness as this, that he can relate what was said and done without suggestions from counsel.

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

A. Mr. Cromwell Simon did state the amount of money he had taken out of the business, yes.

(That the evidence admitted over the foregoing objection and under the ruling of the Court is more fully set forth in the bill of exceptions (Exception No. 21) filed herewith, to which special reference is hereby made as the same is made a part hereof.)

XXII.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows: [205]

Mr. SWEENEY.—At this time I want to offer in evidence the application for Broker's certificate of J. W. Randolph, doing business as Charles Wesley Company.

Mr. McGEE.—As far as the defendant Goodwin is concerned, we object to that as immaterial, irrelevant, and incompetent, hearsay, on the further ground that it is not responsive to any of the allegations of the indictment; there is nothing said in this indictment about Wesley Company. The only names they mention are Cromwell Simon & Cromwell & Co. There is nothing said about the Wesley Company, and we object to it as not responsive to any allegations of the indictment.

Mr. McMILLAN.—The defendant Robinson joins in the objection, and also that the proper foundation has not been paid.

Mr. SWEENEY.—The position of the Government is this, that when Cromwell Simon Company ceased to function, they started in business as

Charles Wesley Company, and continued to do business.

Mr. HARRIS.—Q. Where was that?

Mr. SWEENEY.—In Los Angeles.

Mr. McGEE.—But this crime is charged in the Northern District of California.

Mr. SWEENEY.—The scheme, however, Mr. McGee, might go through the whole country.

Mr. McGEE.—I object to that as immaterial, irrelevant, and incompetent, not responsive to any of the allegations in the indictment.

The COURT.—In other words, you are going to follow it up further than Cromwell Simon & Company?

Mr. SWEENEY.—Yes, we are going to show that they conducted business as Charles Wesley Company, operating from 1403 Hobart Building, where we are going to leave the Cromwell Simon Company, and there on the same date that they were put out of business by [206] the Superior Court of the City and County of San Francisco, they started in business as Charles Wesley Company.

Mr. McGEE.—This indictment charges that within the State and Northern District of California, Southern Division, the crime of using the mails to defraud was committed. They are going down to Los Angeles, now, which is another district, not in this district, and from there, according to the letter that they have attached to the indictment, they are going up to Seattle. In other words, any place they find Simon or Kassmir doing business under any name, in this district or some other

district, they are going to trail him around all through the dealings; I submit, if your Honor please, that the indictment charges this crime was committed in the Northern District of California, and if they subsequently organized a business down in Los Angeles, or Seattle, it is not material.

The COURT.—The whole question is whether it is one common scheme, and the question is to make the connection. I agree with counsel if the connection is not made to show it is all one scheme or course of conduct on the part of the defendants, if the evidence does not connect it up it will not be proper. I will overrule the objection.

Mr. McGEE.—Note an exception.

Mr. HARRIS.—Note an exception.

Mr. McMILLAN.—Note an exception.

(The document was marked U. S. Exhibit 10.)

XXIII.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. HARRIS.—Now, if your Honor please, I make the motion that the testimony be stricken out on the ground that it is a [207] privileged communication.

The COURT.—Q. You also wrote personal letters outside of the business letters while you were there? A. Not that I remember.

Q. You never wrote a personal letter?

A. I do not just remember any personal letters.

Q. They always related to business? A. Yes.

Q. He never wrote a letter that did not relate to some client? A. Not that I remember.

Q. The entire time that you were there?

A. No.

Mr. McGEE.—The defendant Goodwin joins in the motion to strike out the testimony.

Mr. McDONALD.—The defendant Kassmir joins in the motion.

Mr. McMILLAN.—And the defendant Robinson.

The COURT.—I think you ought to make some statement for the record, Mr. Sweeney.

Mr. SWEENEY.—I don't understand what the particular motion is.

Mr. HARRIS.—The motion is to strike out the testimony given by this witness from the record, on the ground it is a confidential communication.

The COURT.—On the ground it was procured in a confidential relationship.

Mr. SWEENEY.—As I understand the rule, not all information that is acquired while a person is a clerk or a secretary is confidential; for instance, the matter of signature is a matter in which a person might be able to raise the curtain of confidential communication and use it as a screen for committing crime. The privilege, itself, is a matter of the client. If Mr. Robinson's clients were here, or something of that character, complaining as to it—

The COURT.—The matter of obtaining information as to a [208] man's signature, in my opinion, is not a matter of confidential communication. The objection will be overruled.

Mr. HARRIS.—Exception.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

Mr. McDONALD.—Exception.

Mr. HARRIS.—I desire to answer counsel's statement. I just want to call your Honor's attention to the section covering that very point, Section 1881 of the Code of Civil Procedure (reading).

The COURT.—It is not the opinion of the Court that that pertains to knowledge acquired of a person's handwriting. The ruling will stand.

Mr. HARRIS.—Note an exception.

Mr. McMILLAN.—Note an exception.

Mr. McDONALD.—Note an exception.

Mr. McGEE.—Note an exception.

(That the evidence admitted over the foregoing objection and under the ruling of the Court is more fully set forth in the bill of exceptions (Exception No. 23) filed herewith, to which special reference is hereby made as the same is made a part hereof.)

XXIV.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. SWEENEY.—If your Honor please, I will offer this in evidence as Government's exhibit next in order.

The COURT.—For identification, or in evidence?

Mr. SWEENEY.—In evidence, your Honor.

Mr. HARRIS.—That is objected to, as far as the defendant Randolph is concerned as being in no way binding upon him, a hearsay [209] transaction

between strangers to him, immaterial, irrelevant and incompetent.

Mr. McMILLAN.—The defendant Robinson joins in that objection.

The COURT.—The objection will be overruled.

Mr. SWEENEY.—It is part of the scheme, that is the Government's contention.

The COURT.—It will be received and marked next in order.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The *coument* was marked U. S. Exhibit 12.)

Mr. SWEENEY.—I will read it. (Reading.)

XXV.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Q. Now, Mrs. McClintock, let me have, please, the circumstances under which this agreement was entered into by you. Let me withdraw that question. I will ask you can you identify that.

A. Yes.

Q. What is that? That is your signature, is it not? A. Yes.

Mr. SWEENEY.—I ask that this be introduced in evidence as Government's Exhibit next in order.

Mr. HARRIS.—The same objection as made to the last exhibit.

Mr. McMILLAN.—We join in the objection.

The COURT.—The same ruling.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 13.)

(That the evidence admitted over the foregoing objection [210] and under the ruling of the Court is more fully set forth in the bill of exceptions (Exception No. 25) filed herewith, to which special reference is hereby made as the same is made a part hereof.)

XXVI.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Q. What was the nature of the conversation you had with Mr. Kassmir at that time?

A. He was going down—

Mr. HARRIS.—That is objected to as calling for the conclusion of the witness, what the nature of it was, and no proper foundation has been paid as to the parties present.

Mr. SWEENEY.—Q. Who was present at that conversation, Mrs. McClintock?

A. Mr. Kassmir.

Q. What was the conversation, what did Mr. Kassmir say?

Mr. McGEE.—That is objected to on behalf of the defendant Goodwin on the ground that it could not be binding on him, and because he was not connected with the concern in Los Angeles, he had no license connected with any enterprise in Los Angeles, he worked in San Francisco for three months, and after that had nothing to do with it; we object

to any conversation this lady had with anybody about any Los Angeles concern.

Mr. HARRIS.—I would like to add the further objection that it is incompetent, for the reason that it is the alleged relation of a co-conspirator after any conspiracy which might have existed had been consummated. This is now in September, 1925, at a time when this conspiracy terminated.

The COURT.—When do you fix the date that you can put in proof to?

Mr. SWEENEY.—There is an allegation in the indictment [211] that prior to the date of certain letters, and the last letter is somewhere in 1927, if I remember right.

The COURT.—Have you it on record, so that we can know?

Mr. SWEENEY.—Certainly there are letters in 1926.

The COURT.—I am just asking you what date you are contending that you can put in proof for, so that we can fix the date after which the declarations of a defendant will only appertain to himself and not to his associates.

Mr. SWEENEY.—March 8, 1927.

Mr. HARRIS.—Is it my understanding that it is counsel's contention that up to March, 1927—

Mr. SWEENEY.—March 8, 1927.

Mr. HARRIS.—(Continuing.) —the scheme had not until that time been consummated or completed: Is that it?

Mr. SWEENEY.—It was in operation up to that time.

Mr. HARRIS.—Of course, if counsel connects that up my objection may not be good.

The COURT.—That is why I wanted him to fix the date.

Mr. McGEE.—Now, do I understand that there is a date when this conspiracy is supposed to have ceased, or is it still in existence?

Mr. SWEENEY.—It was in existence up to March 8, 1927.

Mr. McGEE.—Not after that?

Mr. SWEENEY.—We do not contend it is in existence now.

The COURT.—Q. This date is what, that you are testifying to?

Mr. SWEENEY.—September, 1925, when he went to Los Angeles.

The COURT.—The objection will be overruled and the question allowed.

Mr. HARRIS.—We will note an exception, and reserve our [212] motion to strike out.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. What was the nature of the conversation you had with Mr. Kassmir—what was the conversation you had with Mr. Kassmir at that time?

A. That he was going down to Los Angeles to open up a business to get away from the Corporation Department of San Francisco.

Q. Did he say who was going down with him?

A. Mr. Randolph.

XXVII.

The Court erred in admitting in evidence cer-

tain testimony over the objection of the defendants as will more fully appear as follows:

Q. What was the conversation you had at that time with Mr. Kassmir?

Mr. McGEE.—Objected to on behalf of the defendant Goodwin on the ground it is immaterial, irrelevant, and incompetent, hearsay testimony, and not binding on the defendant Goodwin, unless it is shown he was present at the time the conversation took place.

A. It was in August, 1925.

Mr. HARRIS.—That objection is adopted by the defendant Randolph.

Mr. McMILLAN.—Also by the defendant Robinson.

The COURT.—Overruled.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(That the evidence admitted over the foregoing objection and under the ruling of the Court is more fully set forth in the bill of exceptions (Exception No. 27) filed herewith, to which special reference is hereby made as the same is made a part hereof.)

[213]

XXVIII.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. SWEENEY.—Q. I will ask you, Mrs. McClintock, if you can identify these letters.

A. Yes.

Q. From whom did you get them?

A. From Harry M. Kassmir.

Q. How did they come to you?

A. Through the mail.

Q. Do you know when you received them, in what year? A. 1926.

Q. 1926? A. Yes.

Mr. SWEENEY.—I would like to have these marked as Government's exhibit next in order, your Honor.

Mr. McGEE.—On behalf of the defendant Goodwin, I object on the ground they are immaterial, irrelevant, and incompetent, and hearsay, as far as Goodwin is concerned, he having severed his connection with this company on the 2d of July, 1925, and all of this transaction having taken place subsequent to that time.

Mr. McMILLAN.—We make the same objection as to the defendant Robinson.

The COURT.—Overruled.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Objected to on the ground it is hearsay, incompetent, the proper foundation not having been laid.

The COURT.—I do not know, unless I see the letters, as to whether they do pertain to this matter, at all. (Reading.)

Q. Who is this "Harry"?

A. That is Harry M. Kassmir.

The COURT.—They will be received in evidence. The objection is overruled.

Mr. HARRIS.—Exception. [214]

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 14.)

XXIX.

The Court erred in denying motion of defendants to strike out certain testimony as will more fully appear as follows:

Mr. SWEENEY.—That is all from this witness at this time.

The COURT.—Any further questions?

Mr. McMILLAN.—I have no questions.

On behalf of the defendant Robinson we move to strike out all of the testimony of this witness upon the following grounds: First, that the testimony as against him is hearsay, the proper foundation has not been *paid*, and there is no testimony showing that he ever authorized or sanctioned, or took any part in any statements or representations that were made, that he never authorized or sanctioned any of the letters that were sent through the United States mail and the transaction testified to by the witness, so far as he was concerned, was *res inter alios acta*, and there is no testimony showing that he ever made any statement or representation or sanctioned or authorized any representation made in furtherance either of a general plan or scheme to defraud, or of a general plan or scheme in furtherance of fraud to use the United States mails.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—The same objection on behalf of the defendant Randolph.

The COURT.—The same ruling.

Mr. HARRIS.—Exception.

XXX.

The Court erred in admitting in evidence certain testimony [215] over the objection of the defendants as will more fully appear as follows:

Q. I will show you this letter and ask you if you can identify that? A. Yes, I remember that.

Q. How did you get that letter?

A. I got it through the United States mails.

Mr. SWEENEY.—Any question about this signature?

Mr. McGEE.—No questions.

Mr. SWEENEY.—At this time I would ask that this letter be admitted in evidence as Government's exhibit next in order.

Mr. McMILLAN.—What is the date of that letter?

Mr. SWEENEY.—March 24, 1925.

Mr. McMILLAN.—We object to it on behalf of the defendant Robinson on the ground, as to him, it is too remote, hearsay, and the proper foundation has not been laid.

The COURT.—That is your only objection?

Mr. McMILLAN.—Yes.

The COURT.—I suppose there is no question about the signature?

Mr. McGEE.—No. We admit the signature, and have no objection on behalf of Goodwin.

The COURT.—And none of the other defend-

ants raise the question as to the signature? In other words, it is stipulated that is the signature of the party whose name is signed there?

The COURT.—Is there any question as to the signature?

Mr. McGEE.—No question as to the signature.

Mr. HARRIS.—I will stipulate that that is the signature of Mr. Goodwin.

The COURT.—Will both of you, Gentlemen, also do that?

Mr. McDONALD.—Yes.

Mr. McMILLAN.—Yes, my only point is that—
[216]

The COURT.—I know the other points. Will you stipulate that is the signature?

Mr. McMILLAN.—Yes.

The COURT.—Under the circumstances it will be received and the objection overruled.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 18.)

(Which original exhibit is before this Honorable Court by stipulation and order.)

XXXI.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. SWEENEY.—I will show you this letter and ask you if you can identify it.

A. Yes, I remember that letter, too.

Q. How did you get it?

A. Through the United States mails.

Mr. SWEENEY.—Is there any question about the signature?

Mr. HARRIS.—I have no question about the signature.

Mr. McMILLAN.—I have none.

Mr. McGEE.—I have none.

Mr. McDONALD.—I have none.

Mr. SWEENEY.—At this time, if your Honor please, I offer in evidence the letter dated April 8, 1925, addressed to Mr. Johnson, Chualar, California, signed by Cromwell Simon Company, by Orton E. Goodwin.

Mr. McMILLAN.—Objected to on behalf of the defendant Robinson on the grounds previously stated in the objection made to the previous letter.

Mr. HARRIS.—Objected to on behalf of the defendant Randolph on the ground it is immaterial, irrelevant, and incompetent [217] as to him, not in any way binding upon him, they being entire strangers to him, and without any authorization shown.

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 19.)

XXXII.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Q. I will show you this file and ask if you can identify these. A. Yes.

Q. How did you receive them?

A. Through the United States mail.

Mr. McGEE.—Does that include all of them?

Mr. SWEENEY.—The first four, they are all inclusive.

Mr. McGEE.—Does that include the enclosures?

Mr. SWEENEY.—Yes.

The COURT.—*Let* letters contain the enclosures, too, did they?

A. Yes.

Q. In the same letter?

A. I don't know whether they all came in the same letter, but they all came through the mail.

Mr. SWEENEY.—At this time I offer this file in evidence, which is Government's Exhibit No. 6 for identification.

Mr. McMILLAN.—On behalf of the defendant Robinson that is objected to, may it please your Honor, upon the ground that as to him it is too remote, hearsay, and the proper foundation has not been laid.

Mr. HARRIS.—As I understand it, it is for identification?

The COURT.—No, in evidence.

Mr. HARRIS.—We object to it on behalf of the defendant Randolph on the ground it has not been connected up with him or [218] shown to be the same transaction which was testified to as having been made with Mr. Randolph, not authorized by him.

The COURT.—I presume there is no question that it is the signature of the gentleman whose name appears at the end of the letter?

Mr. SWEENEY.—I think it has already been identified. It is one of the identified letters. It was identified, your Honor.

The COURT.—The objection will be overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

(The document was marked U. S. Exhibit 20.)

XXXIII.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Q. Mr. Johnson, I want to ask you how you got that letter.

A. I got it through the mail, the same as the others.

Mr. SWEENEY.—Is there any question about the signature?

Mr. McGEE.—Not at all.

Mr. HARRIS.—No question as to the signature.

Mr. SWEENEY.—I ask, if your Honor please, that the letter dated May 14, 1925, addressed to Mr. G. A. Johnson, signed by Cromwell Simon Company, Orton Goodwin, be admitted in evidence as Government's next in order.

The COURT.—Is there any question that that is the signature of the individual who signed it?

Mr. HARRIS.—No question of that.

The COURT.—Do any of the defendants' counsel question the signature?

Mr. McMILLAN.—No. [219]

The COURT.—I do not hear you say anything, Mr. McDonald.

Mr. McDONALD.—No, if your Honor please.

Mr. McGEE.—We admit that is his signature.

Mr. McMILLAN.—The defendant Robinson objects on the ground that it is too remote, hearsay, the proper foundation has not been laid.

Mr. HARRIS.—I do not question the signature appearing on the document, but I object on behalf of the defendant Randolph on the ground that no foundation has been laid, it is incompetent and especially irrelevant.

The COURT.—The objection will be overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

(The document was marked U. S. Exhibit 21.)

XXXIV.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Q. I will show you this letter, and ask you how you received that letter.

A. I received it through the United States mail.

Q. This refers to a letter of June 24. Have you a copy of that letter?

A. I have not, I don't think.

Mr. SWEENEY.—At this time I ask that this letter dated July 7, 1925, signed by J. W. Randolph, whose signature has already been identified, be offered as Government's exhibit next in order.

Mr. McGEE.—Objected to on behalf of the defendant Goodwin on the ground it is immaterial, irrelevant, and incompetent, hearsay, as far as he is concerned, in nowise binding upon him, unless

it is proved that the contents of the letter were brought to his attention. [220]

Mr. McMILLAN.—Defendant Robinson adopts that objection.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 22.)

XXXV.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. SWEENEY.—Q. Mr. Johnson, I will ask you if you can identify that.

A. Yes, I remember that one well.

Q. When did you receive it? A. On May 18.

Q. How did you receive it?

A. Through the United States mail.

Mr. SWEENEY.—At this time, your Honor, I offer in evidence what purports to be a dividend notice signed by Cromwell Simon Company, per V. A. Parks.

Mr. McMILLAN.—Objected to on behalf of the defendant Robinson on the ground it is too remote, hearsay, and the proper foundation has not been laid.

Mr. HARRIS.—I adopt the objection of the defendant Robinson on behalf of the defendant Randolph.

The COURT.—Objection overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 23.)

XXXVI.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. SWEENEY.—Q. I will ask you if you can identify that, Mr. Johnson.

A. I remember that one, too.

Q. How did you receive that, Mr. Johnson?

A. Through the mail. [221]

Mr. SWEENEY.—At this time I offer in evidence what purports to be a dividend notice dated August 17, 1925, and signed by Cromwell Simon Company, per V. A. Parks.

Mr. HARRIS.—On behalf of the defendant Randolph we object on the grounds previously stated as to the last dividend notice.

Mr. McMILLAN.—The defendant Robinson objects to it on the ground it is hearsay, incompetent and irrelevant, and the proper foundation has not been laid.

The COURT.—Objection overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

(The document was marked U. S. Exhibit 24.)

(Which original exhibit is before this Honorable Court by stipulation and order and is the letter or payment notice set forth in the indictment as Exhibit "I.")

XXXVII.

The Court erred in admitting in evidence cer-

tain testimony over the objection of the defendants as will more fully appear as follows:

Mr. SWEENEY.—Q. I ask you if you can identify that.

A. Yes, I remember that.

The COURT.—How did you receive it?

A. Through the mails.

Mr. SWEENEY.—I offer it as Government's exhibit next in order.

Mr. HARRIS.—That is objected to on behalf of the defendant Randolph on the ground that there is no foundation laid, no showing that Randolph in anywise authorized the sending of it, or had anything to do with it in any way whatsoever, immaterial, irrelevant, and incompetent, and hearsay. [222]

Mr. McMILLAN.—The defendant Robinson makes the same objection.

The COURT.—All of these documents received through the mail you received on or about the date mentioned upon their face, did you?

A. Yes.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

(The document was marked U. S. Exhibit 25.)

XXXVIII.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Q. I will show you this check, Mr. Johnson, and ask you if you can identify that. A. Yes, I can.

Q. To whom did you mail that check, if you did mail it? A. To Cromwell Simon & Co.

Q. Where did you address the letter to?

A. To the building on Montgomery—the Mills Building, 220—I don't quite remember the address; I don't remember quite what address it was now; it was in the Mills Building, I think 220 Montgomery Street.

Mr. SWEENEY.—At this time I want to present in evidence a check signed by Gustave A. Johnson, dated November 3, 1925, payable to Cromwell Simon Company.

Mr. McGEE.—Objected to on behalf of the defendant Goodwin upon the ground it is immaterial, irrelevant, and incompetent, hearsay, and upon the further ground that it does not respond to any allegation contained in the indictment. There is no allegation in this indictment that anybody was defrauded of any money, there is no allegation in the indictment that anybody paid any money, and here is an attempt made to show that the money has [223] been paid when there is no allegation in the indictment to that effect.

Mr. McDONALD.—The defendant Kassmir joins in that objection.

The COURT.—I do not see the reason for putting it in evidence. He states he made the payment.

Mr. SWEENEY.—We want to show by this witness that he paid this check to Cromwell Simon & Company. On the accounts of Cromwell Simon & Company that check does not show up. We charge

in the indictment here it was part of the scheme and artifice to defraud that the defendant should take and convert such collateral securities to their own use and benefit.

The COURT.—My point is this, the witness on the stand testifies that he made such payment on or about that time. Now, why is it necessary to introduce the check? If the defendant should try to show it did not occur, that he had not sent that check at that time, then you could produce the check, but I don't see any necessity for putting the check in at this time.

Mr. SWEENEY.—There is the matter of endorsement on the back. We want to show that this specific money was specifically converted to the use of one of the defendants.

The COURT.—Q. Do I understand that you sent this check through the mails that Mr. Sweeney is holding in his hands, that he showed you?

A. Yes, through the United States mails.

Q. You got it back, I suppose, in your statement later? A. Yes, I got it back.

Q. That is all you know about the payment?

A. That is all I know.

Mr. HARRIS.—I would like to join in the objection that has already been made.

Mr. McMILLAN.—The defendant Robinson joins in the objection.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception. [224]

Mr. HARRIS.—Exception.

Mr. McDONALD.—You will stipulate that that is not the signature of the defendant Kassmir?

Mr. SWEENEY.—I will so stipulate, it is not the signature of Harry M. Kassmir.

A. I never did get back my Di Giorgia stock nor my Standard Oil stock.

Mr. SWEENEY.—That is all from this witness at this time.

The COURT.—Now, Mr. Sweeney, you have made a concession that that is not the signature of Mr. Kassmir.

Mr. SWEENEY.—I will merely put it in, then, for the purpose of identification at this time.

(The check is marked U. S. Exhibit 41 for Identification.)

XXXIX.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. SWEENEY.—Q. Mrs. Christensen, you were employed in office 1403 Hobart Building during the latter part of 1925?

A. Yes.

Q. Did Mr. Kassmir ever give you any statements to send out at that time?

Mr. McDONALD.—That is objected to as immaterial, irrelevant, and incompetent. This witness has testified that she was a stenographer in the office of Mr. Kassmir's attorney, and all of her testimony would be privileged.

Mr. HARRIS.—I make the objection that it is an attempt to adduce a privileged communication

from this witness, which is not permitted by law, therefore immaterial, irrelevant, and incompetent.

Mr. McGEE.—I join in that objection.

Mr. SWEENEY.—Mr. Kassmir is not an attorney, at least [225] that much must be admitted.

Mr. HARRIS.—I have a direct decision upon the point, that even if the statement is made by the client through an agent of the attorney, for instance, an interpreter, whom it is necessary for him to communicate through, that the privilege extends, and it extends, of course, for the specific reason that he should be permitted to talk freely to him.

The COURT.—I think in this case the theory upon which the prosecution is working is that this is a case where an attorney was a party to the scheme, and went into it intentionally, and consequently, is one of the people in the design, and was not merely one who was consulted for protection in some transaction. The fact that he is an attorney at law does not make him any the less amenable to the charge of using the mails to defraud. I think it is along that line that counsel spoke of that English case.

Mr. HARRIS.—Now, it has been very plainly shown by the Government's testimony, in so far as Robinson is concerned, he came into it many months after—

The COURT.—Counsel is anticipating. I do not believe it is necessary for me to rule on it at this time, because I have the district attorney's as-

surance that it will be connected up, and the prosecution has not rested.

Mr. HARRIS.—I think a ruling should be made at this time, because after the testimony is given the damage will be done, and after two weeks' testimony here the jury will have difficulty in determining what is stricken out.

The COURT.—The prosecution cannot put in their evidence all at once; the case is being built up; it is a question for the Court finally as to whether it has been built up. There is no practical way of ruling to satisfy counsel's objection; the [226] Court cannot decide it until the testimony is in; from a practical standpoint, there is no way for the Court to rule on it now. When the prosecution rests we will know better what is in the record. Proceed, Mr. Sweeney.

Mr. SWEENEY.—Answer the question.

A. Would you ask it again?

Mr. HARRIS.—Does your Honor overrule the objection?

The COURT.—I overrule the objection.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Mr. McGEE.—Exception.

Mr. McDONALD.—Exception.

(That the evidence admitted over the foregoing objection and under the ruling of the Court is more fully set forth in the bill of exceptions (Exception No. 39) filed herewith, to which special reference is hereby made as the same is made a part hereof.)

XXXX.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. SWEENEY.—At this time I want to offer in evidence both the letter written by Judge Bardin and the answer thereto, as Government's exhibit next in order.

Mr. McGEE.—Objected to as immaterial, irrelevant, and incompetent, not binding on the defendant Goodwin, being hearsay, unless it appears that he was informed of its contents.

Mr. HARRIS.—The same objection on behalf of the defendant Randolph.

Mr. McMILLAN.—And also on behalf of the defendant Robinson. [227]

The COURT.—I suppose you are raising no issues as to whether it was deposited in the United States mail?

Mr. McDONALD.—No.

The COURT.—The objection is overruled, and it will be received in evidence.

Mr. HARRIS.—Exception.

Mr. McDONALD.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 26.)
[228]

EXCEPTION No. 41.

The Court erred in admitting in evidence the testimony of Mr. Pike, an attorney at law, in Reno, Nevada, and exhibits introduced in connection therewith, the objections to which were primarily

directed to the claim that the communications testified to were privileged and all of which objections and the rulings made will be hereinafter fully set forth at length and all of which rulings are hereby specifically under this number assigned as error.

Leroy F. Pike, an attorney at law, in Reno, Nevada, called as a witness on behalf of the Government, testified that he knew the defendant Robinson and had met him a couple of times, and knew the defendant Kassmir and met him once, and met the defendant Simon once.

Thereupon the following proceedings were had:
[229]

Mr. McDONALD.—May it please the Court, at this time, slightly out of order, I would like to ask permission to examine Mr. Pike as to his connection with the defendants. I believe it will be clearly shown he met them as an attorney in the exercise of his practice, and that all communications between Mr. Pike and these defendants are privileged.

Mr. NAUS.—We will consent to the examination out of order, if your Honor please, and we would like, as soon as the examination is concluded, to argue this question as to the admissibility of the evidence, not only as to this matter, but as to any other matter where this question of privileged communication existed, and clear that up. Go ahead, Mr. McDonald.

The COURT.—Proceed, Mr. McDonald.

Mr. McDONALD.—Q. You are an attorney at law?

A. Yes.

Q. Duly licensed to practice under the laws of the State of Nevada? A. Yes.

Q. In that capacity, you were representing Mr. Kassmir?

A. I represented Mr. Robinson more, I think.

Q. You represented Mr. Robinson and Mr. Kassmir?

A. When they formed the corporation I performed the services of forming the corporation for them.

Q. All of your correspondence and all of your meetings with Mr. Kassmir and Mr. Robinson were in the course of the formation of this corporation?

A. Well, first in connection with the formation of the corporation, and thereafter I received communications from Mr. Robinson concerning certain matters connected with the corporation.

Q. Concerning the affairs of the corporation?

A. Yes.

Q. You were and considered yourself as attorney for that corporation?

A. I believe that I was acting in that capacity.

Q. You were acting in your professional capacity? A. Yes. [230]

Mr. McDONALD.—We object, if your Honor please, to any testimony of this witness, on the ground that it is a privileged communication between attorney and clients, and respectfully suggest that this witness cannot testify to anything that occurred between them. When I speak of his clients, I mean Mr. Kassmir and Mr. Robinson.

The COURT.—You are representing Mr. Kassmir?

Mr. McDONALD.—Yes.

The COURT.—As I understand it, you are objecting to his testifying?

Mr. McDONALD.—Yes.

Mr. NAUS.—Before ruling on the objection, and before the argument on the objection, I would like to ask two or three questions, with your Honor's permission.

The COURT.—Very well.

Mr. NAUS.—Q. Mr. Pike, in addition to being an attorney at law at Reno, Nevada, practicing your profession there, you also run the business of incorporating companies, do you not, incorporating corporations in that state?

A. Yes.

Q. Mr. Pike, in the State of Nevada, there are a considerable number of individuals and corporations who are engaged in the business of incorporating under the laws of Nevada corporations for persons who make requests from other states?

A. That is true.

Mr. NAUS.—Q. Among the individuals and companies that incorporate in Nevada corporations at the request of those from other states, you are one of the persons who, as an individual, is engaged in that business: Isn't that correct?

A. I have no corporation, that is, no incorporated business.

Q. You have no incorporated company, Mr. Pike, but, for a number of years, you have followed

that business at Reno, Nevada, of incorporating corporations there under the laws of Nevada, upon such requests [231] as you might receive from other states? A. That is true.

Q. You follow the business, and have for years followed the business, have you not, of incorporating corporations under the laws of Nevada, upon requests from other states?

A. I would like to answer that question and make an explanation as to what I did.

Mr. NAUS.—Q. Let us have both, first the answer.

A. I don't know as I can answer without qualifying it, by an answer "Yes" or "No." I am an attorney at law, at least pretend to be, and, in the course of my business, I incorporate companies. Many of those companies come from other states, most of them, as a matter of fact. Frequently, in the incorporating of those companies, I act as resident agent for the company that I organize, and in that capacity I would not act as an attorney at law, but in the other capacities it is purely a matter of legal procedure in the organization of the corporation.

Mr. NAUS.—Q. Now, Mr. Pike, is it not a fact that in the incorporation of a corporation known as Cromwell & Co., Inc., that you attended within the space of 24 or 48 hours to the actual incorporation of that company, and you did not at any single time give any advice to any of the defendants in connection with it?

A. Well, I really could not tell you that, Mr. Dis-

trict Attorney, only to this extent: It is indistinct in my memory as to just what we did. I don't know whether they prepared articles of incorporation, themselves, and brought them to my office, or whether they were prepared in my office. To continue with my answer, if it will be all right—

Mr. McDONALD.—To which we object as immaterial, irrelevant, and incompetent, and a privileged communication.

Mr. HARRIS.—I have not objected to that answer, but I object to any additional answer. [232]

The COURT.—In other words, you are not willing for this witness to explain the statement he has heretofore given?

Mr. HARRIS.—I am not willing to have this witness testify at all if his relations were those of attorney and client, and the cases very distinctly so hold.

The COURT.—Let us not go into that point. The witness has already, without objection from defendants, testified to a certain point. Now, all he is asking to do is to explain the answer. You do not object to the answer he has given up to this point?

Mr. HARRIS.—I am objecting to any testimony concerning this, on the ground it is privileged.

The COURT.—I will overrule the objection.

Mr. HARRIS.—Exception.

A. As I said, I don't know, I don't remember whether or not they prepared the articles of incorporation and brought them to my office, or not—I do not remember just exactly what the procedure

was upon that occasion. I do remember that these gentlemen came to my office, and that I proceeded to organize a corporation for them, doing certain things in connection therewith which I might consider to be the services of an attorney, and which you might not.

Mr. NAUS.—Perhaps you and I might differ on that, and the Court might differ on that.

A. Yes.

Q. Your business with them was conducted mainly by correspondence, was it, Mr. Pike?

A. All business except one meeting.

Q. I hand you what is marked Exhibit 33 for Identification, and ask you if you recall having received that in the mails, at about the date it bears date, from Mr. Robinson.

Mr. HARRIS.—At this time, if your Honor please, we object to the witness testifying as to whether he received any letter, he having testified that all of this business in connection with this transaction was in his capacity as attorney at law.
[233]

The COURT.—I am presuming that the District Attorney's theory is that he is going to either prove Mr. Pike as one of the parties to the design, with the knowledge that it would be necessary for him to have, or he is endeavoring to show that despite the statement already made by the witness that he was employed entirely in the capacity of an attorney at law, that, as a matter of fact, he was not an attorney.

Mr. NAUS.—Correct. May I add, your Honor,

the inquiry now before the Court is an inquiry as to whether a certain objection to a right of privilege is a proper objection. I am merely examining with respect to that. When we finish the temporary examination we will go back to that objection and I then wish to argue first, that Mr. Pike did not act as an attorney in this matter within the meaning of the law, and, secondly, even though he did, we will show that the privilege does not exist in this case, as I will point out from the authorities.

A. Your Honor, I would like to ask a question for information, if I may, as to the statement the Court made, as to what the deductions were from the procedure of the District Attorney. I came here under subpoena of the District Attorney to testify in this case, and give him such information as I am called upon to give, which I am perfectly willing to give, if it is not privileged.

The COURT.—Never mind involving yourself. The situation here is there are certain exceptions to the rule, and you are not interested, so far as the ruling of the Court is concerned, if questions are allowed by the Court. Of course, we want a candid expression from you as a witness as to whether you were working in the capacity of an attorney, as far as you know.

The WITNESS.—In my opinion, I was.

Mr. NAUS.—Let us get back to the question.

Q. You recall, do you not, that, as you stated, your business with [234] these gentlemen was by correspondence, and you recall further, do you

not, receiving from Mr. Robinson that letter marked Exhibit 33 for Identification? A. Yes.

Mr. HARRIS.—If your Honor please, I renew the objection, and would like a ruling of the Court on it. Counsel is asking a new question now, and I want to preserve the record. If it is a privileged communication, he is not entitled to an answer.

The COURT.—The objection will be overruled.

Mr. HARRIS.—Exception.

Mr. McDONALD.—Exception.

Mr. NAUS.—Q. You recall further, do you not, that it was upon that letter that you thus received, Exhibit 33 for Identification, that you proceeded to incorporate the corporation in question?

Mr. HARRIS.—Objected to as leading and suggestive, and calling for the conclusion of the witness, and asking for a privileged communication.

Mr. NAUS.—I have not asked for the contents of any communication so far.

Mr. HARRIS.—Your Honor has instructed us several times not to argue these points, and we do not desire to interrupt an answer. Mr. Naus has not been here throughout the case, and I do not desire to add on to the record or interrupt the testimony, but it puts us to a good deal of disadvantage when Mr. Naus constantly makes this kind of remarks, and we do not answer them.

The COURT.—If Mr. Naus makes a statement that is not properly in the record, or in evidence, although it should not have been made, it is not to be considered as evidence, of course; no statement

of counsel is to be received by the jury as evidence. I will allow the question.

Mr. HARRIS.—Exception.

A. Undoubtedly no. [235]

Mr. NAUS.—Q. Now, Mr. Pike, it is a fact, is it not, that when you were called upon to incorporate this corporation in question, you were not asked to give a single piece of advice to any one of the defendants?

Mr. HARRIS.—Objected to as leading and suggestive, immaterial, irrelevant, and incompetent, tending to elicit a privileged communication.

Mr. NAUS.—I am trying to find out if he was employed to give any advice, or whether he was merely employed to do a ministerial or clerical act.

Mr. HARRIS.—It does not make any difference.

The COURT.—I will overrule the objection.

Mr. HARRIS.—Exception.

A. Well, up to the time of receiving this communication, I had undoubtedly never met any of the gentlemen except Mr. Robinson, and I think perhaps before that time I had met him through an attorney in San Francisco for whom I had incorporated a company.

Mr. NAUS.—I ask that the answer go out as not responsive.

A. I have not finished, yet. According to my recollection now, the articles of incorporation were sent to me, and I was requested to see whether or not they were in conformity with the laws of Nevada; and if they were to see that they were filed and copies of same were sent to them after the

company was organized, and that undoubtedly was done, but the letter is not in evidence.

Q. Now, Mr. Pike, I hand you another document, marked Exhibit 34 for Identification, and ask you whether you recall receiving that from Mr. Robinson as a part of the instructions to you in this corporation work by you?

Mr. McDONALD.—To which we object as immaterial, irrelevant, and incompetent, a privileged communication between attorney and client. [236]

Mr. NAUS.—I am merely asking if he received it.

Mr. HARRIS.—We join in the objection in behalf of the defendant Randolph.

The COURT.—I will overrule the objection, at this time.

Mr. HARRIS.—Exception.

Mr. McDONALD.—Exception.

A. Yes, I received this letter at the organization of the company.

Mr. HARRIS.—Now, if your Honor please, the witness has testified he received it, and we ask that he not refresh his recollection from it, but that we have his testimony without refreshing his recollection from it. It is not a memorandum made in his handwriting.

Mr. NAUS.—Q. Now, Mr. Pike, I hand you Exhibit 33 for Identification, and ask you whether you received that from Mr. Robinson in the course of his instructions to you about this incorporation work.

Mr. McDONALD.—To which we object as imma-

terial, irrelevant, and incompetent, and a privileged communication between attorney and client.

Mr. HARRIS.—We join in the objection.

The COURT.—This particular letter “YY” was received after the incorporation? A. Yes.

Q. Was that true of that other one?

A. That must have been.

Q. In other words, at that time you were acting as the agent, were you?

A. Your Honor, I do not believe I ever acted as agent for this Company, but the records from the Secretary of State’s office, or the Clerk’s office would show whether I was, or not, but acting as resident agent would not have anything to do, necessarily, with the transfer of stock certificates, unless you were acting as registrar or as assistant secretary.

Mr. NAUS.—Q. Getting back to the question, did you or not receive that as a part of the incorporation work done by you for Mr. [237] Robinson?

A. Yes.

Q. Now, Mr. Pike, I hand you another document, marked Exhibit 36 for Identification, and ask you whether you likewise received that from Mr. Robinson as part of your instructions in this incorporation work?

Mr. McDONALD.—To which we object as immaterial, irrelevant and incompetent, a privileged communication, between attorney and client.

Mr. HARRIS.—We join in the objection.

The COURT.—The objection will be overruled.

Mr. HARRIS.—Exception.

Mr. McDONALD.—Exception.

A. Yes, I received this letter.

The COURT.—In regard to the issuing of certificates in connection with the corporation, you would do that as agent?

A. Frequently, in order to have stock certificates issued in the State of Nevada, they ask some person in the office to be named as a registrar, or as assistant secretary, or something of that sort, and then on their instructions the stock is issued. The resident agent merely acts for the purpose of receiving process, service upon him in legal procedure.

Q. But I mean to say that in acting for the purpose of transfer of stock, or issuing of a particular kind of a certificate, in doing that particular act you would not characterize it as part of your law work?

A. No.

Q. You feel that in that work you would be acting in the capacity of agent?

A. Yes. That was done merely as an accommodation.

Mr. NAUS.—Q. As a matter of fact, it was your stenographer at Reno who acted as secretary or transfer agent for this corporation, was it not?

A. That is true, and they wrote to me apparently instead of to her, and I gave the letter to her and she did as they [238] requested.

Q. Then you would write back and tell them it was done?

A. After the incorporation of the company, yes.

Q. Now, Mr. Pike, I hand you a batch of papers, and ask you whether you recognize those as your own personal file that was sent to San Francisco a

couple of months ago—your own personal file of letters that you wrote to Mr. Robinson in reply to the letters I have handed up to the Court.

Mr. McDONALD.—To which we object on the ground it is immaterial, irrelevant, and incompetent, a privileged communication between attorney and client.

The COURT.—Q. During that time did you act in the capacity of agent as distinguished from an attorney at law?

A. As a matter of fact, I do not believe I ever was the agent for this corporation.

Q. But didn't you do acts which were the acts of an agent? A. Yes.

Q. For instance, the work in this last letter appertains to work which was not, in itself, the work of an attorney at law?

A. Yes, I think that is correct.

Q. So that although you may not have been resident agent, you did act as distinguished from an attorney at law?

A. In those capacities I did.

Mr. HARRIS.—I join in the objection made by counsel.

Mr. HARRIS.—As far as the defendant Randolph is concerned, I join in the objection, and I adopt the objection of hearsay, there is no connection shown.

The COURT.—The objection will be overruled.

Mr. HARRIS.—Exception.

Mr. McDONALD.—Exception.

The COURT.—As I understand it, from what you

hold there, [239] that work is characterized as the work of an agent as distinguished from an attorney at law?

A. I think most of those letters refer to that.

Q. If there are any that do not, specify any regarding work that you were doing in the capacity of an attorney at law; segregate them.

Mr. HARRIS.—One moment. I object to that as calling for a conclusion on the part of the witness. That is for the Court to determine, as to whether they are in the capacity of an attorney at law, or as an agent.

Mr. NAUS.—I think Mr. Harris states the correct rule, it is for your Honor and not the witness.

The COURT.—I was going to do that. You separate them and hand them to me.

A. Well, I think that is for your Honor to determine.

Mr. NAUS.—Hand them up to the Court.

Q. Were these letters sent by you to Mr. Robinson as a part of the correspondence in which you received these other letters from him? A. Yes.

Q. That batch you hold in your hand and the batch on his Honor's bench comprise the transaction between you and any of these defendants?

A. Absolutely.

Q. And your entire dealings were by correspondence as far as this corporatiton work was concerned?

A. Except when they first organized the company they appeared there and held a meeting there.

Q. Just the routine steps of making out the paper, steps that were taken? A. Yes.

Mr. NAUS.—Q. Do these yellow sheets that you just held in your hand, together with the white sheets on his Honor's bench, do those, together, comprise the transaction between you, on one side, and the defendant on the other, with reference to this corporation [240] work?

Mr. HARRIS.—We object on the ground it is an incorrect statement of the testimony, the witness having already stated they were there in person, and transacted business, and adopt the rest of the objection.

Mr. McDONALD.—The same objection on behalf of the defendant Kassmir.

The COURT.—Were they there in person?

A. Well, on one occasion, when they organized the company, Mr. Robinson and Mr. Kassmir, and I think Mr. Cromwell Simon was there, but I am not sure about that. I think they came up there one day and held a meeting, but outside of that, if they were all there, these letters represent the entire transaction between us.

Mr. NAUS.—If your Honor please, unless counsel wish to examine him further on the question, I am prepared to argue the question of the admissibility of the evidence.

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McDONALD.—Just one question:

Q. You met Mr. Kassmir, did you not, before you met Mr. Robinson?

A. I don't remember whether I did or not. I know Mr. Robinson was sent to me one time by an attorney named Frank Golden, for whom I organized a couple of companies.

A. Anyhow, Mr. Golden had some companies incorporated, and then he sent Mr. Robinson to me, and whether I met Mr. Robinson before I met Mr. Kassmir I don't know. As a matter of fact, I almost had forgotten having met Mr. Kassmir until I saw him in the courtroom.

Q. You would not say positively that you had not met Mr. Kassmir and Mr. Cromwell Simon before you met Mr. Robinson, and were retained by them to advise them as to the proposition of incorporating under the laws of Nevada?

A. Undoubtedly I did advise them about [241] incorporating under the laws of Nevada. Whether I met him before Mr. Robinson, or at the same time, I could not be able to tell you.

Q. You advised them as to the very liberal features of the Nevada laws?

A. What I believed to be liberal features, yes.

Q. You discussed with them that advice?

A. I don't know whether you want me to go ahead with the answer on this matter.

Mr. NAUS.—I am not objecting. Go ahead and answer any question that is asked you.

A. I think I did, perhaps.

Mr. McDONALD.—Q. And in all of this transaction, Mr. Pike, you acted as an attorney at law?

A. Well, up to a certain point I would say I did.

Q. You never were resident agent of this corporation?

A. No, I thought that I had been, but it developed that I was not resident agent, and in receiving letters from Mr. Robinson concerning the transfer of stock I suppose he wrote to me because he probably told me that I was acting as resident agent, or because my stenographer at that time was acting as registrar or assistant secretary of the corporation.

Q. You know, as a matter of fact, that Mr. McCaffrey was the resident agent of this corporation?

A. I think he was, now.

Q. These letters were sent to you in your capacity as attorney at law to advise with Mr. McCaffrey?

A. Well, I never advised with Mr. McCaffrey, at all, that I remember of. Once in a while he would come around and have me identify him to cash a check, or something, but when I would receive these letters from Mr. Robinson I would hand them to my stenographer, and she would carry out their instructions and perhaps hand whatever papers were necessary to be delivered to him to me to see whether or not they were correct as far as the form of procedure was concerned, and they would be mailed to him.

Mr. McDONALD.—At this time, on behalf of the defendant [242] Kassmir, we will renew our objection, and ask that all of the testimony of this witness be stricken out on the ground that it is a privileged communication between attorney and client.

Mr. HARRIS.—We join in the objection made by Mr. McDonald.

The COURT.—At this time the objection will be overruled.

Mr. HARRIS.—It was really a motion to strike. It is denied?

The COURT.—Denied.

Mr. HARRIS.—I wish to note an exception on behalf of the defendant Randolph.

Mr. NAUS.—Q. Now, Mr. Pike, one of your answers to Mr. McDonald was, as I recall it, “I think, perhaps.” You recall that answer, when he was asking you as to whether you had given any advice outside of what these letters called for?

A. Well, I notice in that—

Q. (Interrupting.) Do you remember that answer? A. Yes.

Q. Did you answer that way because you had no independent recollection right now of having ever given any advice other than what you gave in writing these letters?

A. I do think, Mr. District Attorney, that on one occasion, when the company was formed, that these gentlemen were there, and that I perhaps advised them as to the procedure under the Nevada laws.

Q. You say perhaps you advised them. Can you say that you did?

A. I could not say positively, but I notice in the first communication to me that they asked me to look over the articles and—

Mr. NAUS.—Q. Have you finished your answer?

A. No, I had not. They asked me to look over

the articles and advise them as to whether or not they were in correct form under the Nevada law.

Q. I am asking you at this time not to reason from anything you see in writing, here, but to search your recollection and say whether from your recollection you can say there was ever a single time that [243] you had any oral interview with any of these defendants and advised any of them.

A. I may be mistaken, but I believe that I did, that the first meeting was held after the articles of incorporation had been filed, that these gentlemen came to Reno and came to my office, and that there a meeting was held, and that on that occasion I advised them as to the form of different resolutions that should be passed, and matters of that kind.

Q. But you have no distinct recollection of that, have you, beyond assuming that that probably happened?

A. Well, I am quite sure that it did.

Mr. NAUS.—That is all.

Mr. McDONALD.—At this time we renew our motion.

Mr. NAUS.—We are prepared to argue this whole matter now, if your Honor please.

Mr. McDONALD.—We renew our motion to strike all of the testimony of this witness from the record upon the ground that the testimony shows that this witness was acting in the capacity of an attorney at law in the State of Nevada, that all of his communications with these defendants, or any of them, were privileged communications, and ad-

vice that he gave his clients, upon requests for advice.

Mr. HARRIS.—We join in the motion on behalf of the defendant Randolph.

(Thereupon the jury retired and counsel proceeded to argue the question, at the conclusion of which the jury returned to the courtroom.

The COURT.—The jury being present, and the defendants being present, I will ask the reporter to read the motions of counsel.

(The record was read by the reporter.)

The motions will be denied.

Mr. HARRIS.—Exception on behalf of the defendant Randolph.

Mr. McDONALD.—Exception on behalf of the defendant Kassmir. [244]

Mr. SWEENEY.—At this time I would like to offer in evidence Government's Exhibit No. 33 for identification.

Mr. McDONALD.—To which we object on the grounds heretofore stated.

Mr. HARRIS.—We object on the ground it is a privileged communication, and not permitted to be divulged by the law.

Mr. McMILLAN.—As far as the defendant Robinson is concerned, it is objected to on the ground the proper foundation has not been laid.

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception on behalf of the defendant Randolph.

Mr. McMILLAN.—Exception on behalf of the defendant Robinson.

Mr. McDONALD.—Exception on behalf of the defendant Kassmir.

Mr. SWEENEY.—Q. How did you get this letter?

A. I got it through the mail, I imagine.

The COURT.—Q. You imagine. Do you know that?

A. I am quite sure it must have come through the mail, yes.

Mr. SWEENEY.—Q. Do you recall receiving it through the mail?

A. I know it was in our file, and I was requested by the United States District Attorney to bring it down here.

Mr. McMILLAN.—We renew our objection to the introduction of the document in evidence, on the ground it has not been identified as having been received by the witness through the United States mails.

Mr. HARRIS.—The same objection.

The COURT.—I will permit it to be received.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—It is dated July 25, 1925, Samuel H. Robinson, Attorney at law, Hobart Building, San Francisco, Cal.

(The document was marked U. S. Exhibit 27.)

[245]

(Which original exhibit is before this Honorable Court by stipulation and order and is a letter set forth in the indictment as Exhibit "WW," dated July 25, 1925.

EXCEPTION No. 42.

Q. Can you identify that, Mr. Pike? A. Yes.

Q. What is that?

A. This is a letter I wrote to Mr. Robinson when I received that letter.

Q. When you received this letter through the mail?

A. Yes, when I received it—I think I received it through the mail.

Mr. SWEENEY.—If your Honor please, I offer in evidence the letter of July 28, 1925, addressed to Mr. Samuel H. Robinson.

Mr. HARRIS.—To shorten the record, may it be deemed that we make the same objection, and may it be so stipulated, to each and every one of these letters between Mr. Pike and Mr. Robinson, on the same grounds heretofore stated, they are privileged communications, and, therefore, are not admissible?

The COURT.—On the objection of being privileged communications.

Mr. HARRIS.—Yes, unless counsel have any additional objections.

Mr. McMILLAN.—The objection of Robinson is that these letters are without proper foundation; it has not been shown that they were deposited in the mail in this jurisdiction, that is, in the Southern Division of the United States District Court for the Northern District of California, nor has it been shown that they were received by the witness through the mail, or sufficiently shown that they

were mailed, or that they had been received in this jurisdiction through the United States mail.

Mr. HARRIS.—We adopt that objection on behalf of the defendant Randolph.

The COURT.—Q. Did you mail the original letters?

A. I never mailed them, I dictated the letters, and this has got my dictation marks on it. [246]

Q. You don't know, personally, whether it was mailed, or not?

A. Personally, I do not; that is, I could not say it was put in the postoffice, but that is my belief, that it was.

Q. In other words, all you did was to dictate it, sign it, and give it to whom?

A. To my stenographer. Perhaps I did not even sign it.

Q. And you gave her instructions to mail it?

A. Yes. That is as far as I can go.

Mr. SWEENEY.—It is in the ordinary course of business.

Mr. SWEENEY.—As a matter of fact, this letter is not an indictment letter.

The COURT.—I presume you are offering it because it is a letter that you believe was received by the defendants, or some of them, in connection with the scheme?

Mr. SWEENEY.—It is a part of the general scheme.

The COURT.—But you do not show that it was ever received. How does this bear on it if it is not shown it was put in the mail?

Mr. SWEENEY.—Because Mr. Pike testified that was the usual way of mailing letters.

Mr. McGEE.—That is no proof that this letter was ever mailed in the United States postoffice box.

The COURT.—I will sustain the objection to this letter.

Mr. SWEENEY.—The question, your Honor, is was the letter received? We are not interested in this particular letter as a mail letter. It is not a letter set out in the indictment.

The COURT.—How are you going to connect it up with the fact that it was received.

Mr. SWEENEY.—Q. Can you identify this?

A. Yes, that is one of the letters.

Mr. McGEE.—Are we still on the last letter, or are we proceeding on some other letter? [247]

The COURT.—For your information, so we won't have to have the record read, the copy of the letter which was offered has not yet been received. Mr. Sweeney is endeavoring now, as I understand it, to lay a proper foundation for its reception in evidence.

Mr. SWEENEY.—Q. Are you familiar with that letter?

A. Yes.

Q. Did you receive this through the mail?

A. I received it in my office, and I want to state—

The COURT.—Q. Do you open up your own mail?

A. Most all of my mail I open. Frequently it is opened by my secretary and I read it.

Q. When you receive your mail after it has been

opened by someone else, do they bring you the envelope as well as the letter?

A. Yes, as a rule, it is all laid on my desk.

Q. You say as a rule. Have you any recollection?

A. I am convinced in my own mind that I received it through the United States mail, in the ordinary way, the same as all letters.

Q. Is that your recollection?

A. That is my recollection.

Mr. SWEENEY.—At this time we make an offer of Government's Exhibit No. 35 for Identification.

Mr. McDONALD.—We object on the ground heretofore stated, and on the further ground the witness does not know whether this was received through the United States mail.

Mr. McMILLAN.—The defendant Robinson objects on the ground that the proper foundation has not been laid, in that it has not been shown that this letter was mailed in this jurisdiction, or the other letter received was mailed, or received in this jurisdiction.

The COURT.—I might call counsel's attention to the fact that whether it went through the mail, or not, it might be relevant; it might have been a letter which was written and signed, and have some bearing upon the issue, show some connection with it, and at the same time it might have been delivered by hand. You may make your [248] objection as to the mailing, or you can make it a complete objection.

Mr. McMILLAN.—I adopt your Honor's suggestion.

Mr. McGEE.—The defendant Goodwin does, also, with the further objection that it is one of the letters upon which one of the counts of this indictment is based, and according to the allegation of the indictment it was mailed in the United States mails, and, therefore, that becomes a material part of the admissibility of this letter in evidence, to sustain that letter being received in evidence.

Mr. HARRIS.—I adopt all of the objections made on behalf of the other defendants.

The COURT.—Overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

(The document was marked U. S. Exhibit 28.)

(Which original exhibit is before this Honorable Court by stipulation and order and is the letter set forth in the Indictment as Exhibit "AAA").

EXCEPTION No. 43.

Mr. SWEENEY.—Q. You have already identified that, I believe, Mr. Pike.

A. Yes.

Mr. SWEENEY.—At this time I will offer in evidence Government's Exhibit No. 34 for Identification.

Mr. McDONALD.—To which we object on the ground it is immaterial, irrelevant, and incompetent, a privileged communication, upon the further ground that the proper foundation has not been laid.

The COURT.—On this letter no testimony has been offered, at all, practically none. I suppose as to this letter the procedure was the same as before, that is, you received it, and believe it [249] came through the United States mails, but you don't know positively how it got on your desk.

A. That is correct.

Q. You found it in your files? A. Yes.

Q. You recall receiving the letter, but you don't know how you got it, except you got it on your desk? A. Except my own belief, that is all.

Mr. McMILLAN.—The defendant Robinson makes the same objection that has heretofore been urged to the other exhibits, upon the ground that the proper foundation has not been laid.

The COURT.—The objection will be overruled.

Mr. McMILLAN.—Exception on behalf of the defendant Robinson.

Mr. HARRIS.—Exception on behalf of the defendant Randolph.

(The document was marked U. S. Exhibit 29.)

(Which original exhibit is before this Honorable Court by stipulation and order and is the letter set forth in the Indictment as Exhibit "YY.")

Referring to the letter of Samuel H. Robinson of August 26, 1925, and in answer to your question whether I mailed those certificates, I gave that letter to the stenographer and instructed her to fill them out as requested, and to mail them to him. I have no direct knowledge whether they were mailed or not; she can undoubtedly testify whether they were or not. [250]

The method of handling correspondence in my office was, I would dictate a letter to my stenographer, and sometimes if it was in the course of routine business, I might not even sign it, and she would put a stamp on it and put it in the post-office. This would be in the ordinary course of my business.

EXCEPTION No. 44.

Mr. SWEENEY.—Q. I will show you this letter and ask you if you can identify that.

A. Yes, that was written to me by Mr. Robinson.

Q. On the subject matter? A. Yes.

Mr. SWEENEY.—At this time I offer in evidence Government's Exhibit No. 36 for Identification.

The COURT.—Let me see what that is.

Mr. SWEENEY.—The signature has already been identified.

Mr. McDONALD.—Objected to on the ground it is immaterial, irrelevant, and incompetent, and a privileged communication.

Mr. McMILLAN.—Objected to on the grounds heretofore stated with reference to the other letters, and, furthermore, that the venue has not been sufficiently established.

Mr. HARRIS.—I adopt all the objections on behalf of the defendant Randolph.

The COURT.—The objection will be overruled and it will be admitted in evidence.

Exceptions were taken on behalf of defendants Kassmir, Randolph and Robinson.

(The document was marked U. S. Exhibit 30.)

(Which original exhibit is before this Honorable Court by stipulation and order and is the letter set forth in the Indictment as Exhibit "BBB.")

EXCEPTION No. 45.

Referring to the letter of July 25 received from Robinson, I did receive an original and two copies of the articles of [251] incorporation of the Cromwell Company, and filed a copy of them at the Secretary of State's office in Carson City, and filed a copy in the County Clerk's office in the City of Reno, and kept the other copy in the office, I imagine, as the law requires. The exemplified copy that you are now offering in evidence is a true copy of the articles that I left with the Secretary of State on July 30, 1925.

The foregoing testimony was objected to by counsel for Randolph on the grounds that it is immaterial, irrelevant, and incompetent, and privileged communications between attorney and client; objections overruled, and exception noted.

(The document was marked U. S. Exhibit 31, which original exhibit is before this Honorable Court on stipulation and order.)

The corporation had an initial meeting in the office. There were present Mr. Glynn, Mr. Cahlan, Miss Zannon, myself, Mr. Kassmir, Mr. Robinson, and Mr. Cromwell Simon. I do not remember Cromwell Simon very much; I am quite sure he was there. Miss Zannon wrote up the minutes of the first meeting. There were two meetings, the incor-

poration meeting and the meeting of the first Board of Directors.

EXCEPTION No. 46.

Mr. SWEENEY.—Q. Mr. Pike, I will ask you if you can identify this.

A. Yes, they are certificates or blank stock certificates of Cromwell Company, Inc., both common and preferred; also there are a few certificates which have been partially made out, that is, they are signed, but do not bear the seal of the corporation.

Mr. SWEENEY.—At this time I offer in evidence what purports to be or what are the stock certificates of Cromwell & Co., Inc., both common and preferred.

Mr. HARRIS.—To which we desire to enter an objection on [252] behalf of Randolph that no foundation has been laid, it not being shown that he had any control, knowledge, or direction thereof.

Mr. McMILLAN.—Objected to on behalf of Robinson that the proper foundation has not been laid.

The COURT.—How do these bear upon the issue?

Mr. SWEENEY.—This is being identified as a certificate of stock which Mrs. Beans got in lieu of money that she paid to Cromwell & Co., in the bank which was started. I am going to trace the certificate back to its place of origin in these books, back to Robinson, back to Kassmir. In other words, it is a part of the scheme to take the money and property from one of these victims, or some

of these victims, not only that, but I am going to prove that each one of these certificates was issued to various victims who had given their money and property to Cromwell Simon & Co.

The COURT.—The objection is overruled, and it will be received.

Exception taken by Randolph and Robinson.

Cross-examination.

(By Mr. McMILLAN.)

The mail coming into my office is frequently opened by my stenographer. Usually my stenographer will open the mail, segregate it, and lay it on my desk. Envelopes are thrown into the waste-basket; we seldom keep them unless there is some purpose in keeping them. Don't believe that we kept any of the envelopes in this matter. I have found none.

EXCEPTION No. 47.

Mr. McMILLAN.—May it please your Honor, we move to strike out all of the testimony of this witness on behalf of the defendant Robinson, all of the testimony wherein the letters have been introduced in evidence under the testimony of this witness, upon the grounds that the proper foundation has not been laid, and that the [253] venue has not been sufficiently shown in any instance to entitle any of such letters to admission in evidence.

The COURT.—I am going to rule upon the matter, but will just give you my idea. Imagine a letter was not actually shown by circumstances that justified a person in believing that any particular

matter came through the mail, and that the letter has been identified as a communication, a signed communication of one of the parties charged here; imagine also that there is certain information in it that bears upon the issues here. It may be admissible, although it may not measure up to the point that you are basing your objection on, as to whether it went through the mail. I think you will find such matter in going through the record. I am trying to give counsel an idea of the method of ruling, even though it should not be shown that it was sent through the mail; it might be admissible anyway. I will overrule the objection.

Exception was here noted by counsel for Robinson, and counsel for Randolph joined in the aforesaid objections and moved to strike out testimony of witness, which motion was denied and noted his exception to the Court's ruling overruling his objections.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 42.

That the Court erred in admitting in evidence certain testimony of Tess Belford, secretary and stenographer of Mr. Pike, the attorney, and exhibits in connection therewith which said testimony and the rulings assigned as error in connection therewith more fully appear as follows:

The witness testified that during the year 1925, she was secretary and stenographer to Mr. Leroy F. Pike, City Attorney of Reno, Nevada. That her name at that time was Miss Zannon. [254]

Q. What was the custom in Mr. Pike's office with reference to mail, Mrs. Belford?

Mr. HARRIS.—At this time may we have the objection as to the privileged character of the communication extending to the secretary or clerk of any attorney at law, and I therefore object as immaterial, irrelevant, and incompetent, and an attempt to elicit a privileged communication prohibited by law.

The COURT.—Overruled.

Mr. HARRIS.—Exception.

(It is understood under order of Court that counsel for Randolph has the foregoing objection to all of the testimony of this witness on the ground that it is a privileged communication.)

Usually I got the mail before I would come to the office in the morning, opened and laid it on his desk, and I usually mailed it. As to letters that Mr. Pike was sending out, the custom was for me to mail them, in the U. S. postoffice. All the letters you show me, except that of September 22, 1925, I identify; they are copies of letters I wrote, and I can say that I mailed all the originals of those letters.

(These four copies of letters from Pike to Robinson dated July 28, Aug. 3, Aug. 13, and Sept. 1, 1925, are here offered in evidence under the foregoing objections, admitted in evidence, exception taken, and marked U. S. Exhibit 34, which exhibits are before this Honorable Court by stipulation and order.)

On this letter of July 28, 1925, the "LEP" stands

for Leroy F. Pike, and "Z" for myself. I was Secretary in the Cromwell & Co., Inc., and present at the first meeting of the Board of Directors. What you show me is a true copy of the original minutes of the meeting which I mailed to Mr. Robinson. I prepared the originals, which are dated August 1, 1925. The [255] originals were actually executed by the directors, and I actually saw the signatures put on, by the dummy directors. These minutes to the extent that they appear were adopted.

(The document was admitted in evidence and marked U. S. Exhibit 35, which is before this Honorable Court by stipulation and order.)

What you now show me and which I identify is certificate of preferred stock of Cromwell & Co., which is signed by me and issued by the Company through me as Secretary.

(The document was admitted and marked U. S. Exhibit 36, the original of which is before this Honorable Court by stipulation and order.)

Referring to this stock-book, which is Government's Exhibit 33, I issued every one of those stock certificates. The information with reference to the particular transfers shown usually came from San Francisco, from Mr. Robinson, I think. This letter, Government's Exhibit 29, came through the mail.

Mr. SWEENEY.—Q. Take the book of common stock, Mrs. Belford, are those notations in your writing?

A. Yes, they are.

Q. I will ask you if you can identify that.

A. Yes, I can.

Q. Your signature appears on the bottom of it?

A. It does.

Q. Was the stock issued?

A. By me, for the company.

Mr. SWEENEY.—At this time I want to offer in evidence Certificate 51 of the common stock.

Mr. HARRIS.—In addition to the objection as to privilege, I object on the ground that no authorization or direction or adoption of it by Randolph is shown, immaterial, irrelevant, and incompetent.

Mr. McMILLAN.—The defendant Robinson adopts the objection made by counsel for Randolph.
[256]

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 39.)

(Witness here identifies three certificates as issued by the company, with her signature thereon, and same are marked U. S. Exhibits 44, 45, and 46 for Identification.)

These represent all the transfers of stock that took place while I was secretary. I remember in the minutes that were read Mr. Kassmir paid for or subscribed for \$50,000 worth of stock. Don't know whether that money was ever paid. Do not recall any other minutes ever written up while I was secretary. Mr. Simon was the treasurer, at time company was formed. I had charge of the stock-books, the minute-book, and I think there was

a ledger of some sort—the stubs in the stock certificate book. Mr. Pike was the resident agent. Don't remember having seen those ten certificates signed up in blank. I dated the certificates.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 43.

The Court erred in admitting in evidence United States Exhibits 41, 42 and 43, over the objections of the defendants as will more fully appear as follows:

Mr. SWEENEY.—Q. I will show you Government's Exhibit No. 10 for Identification, and ask you if you recognize that.

A. Yes.

Q. Do you know how you got it?

A. Through the mail.

Q. Where did you receive it?

A. At 1828 Anza Street, in June or July, 1925.

Mr. SWEENEY.—I offer it in evidence.

Mr. McMILLAN.—Robinson objects on the grounds that the [257] proper foundation has not been laid, no showing that he authorized or knew anything about the sending of the letter.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 41, which original exhibit is before this Honorable Court by stipulation and order, and said letter appears in the indictment as Exhibit "N.")

Witness identifies two checks given by her, the

latter of which she said she gave to Randolph personally, and these checks are introduced in evidence and marked respectively U. S. Exhibits 42 and 43, the originals of which are before this Court by stipulation and order.

To which ruling the defendant then and there duly and regularly excepted.

EXCEPTION No. 44.

That the Court erred in receiving in evidence United States Exhibit 44 over the objections of these defendants as more fully appears as follows:

Mr. SWEENEY.—Q. I will show you Government's Exhibit No. 11 for Identification, and ask you if you can identify that.

A. That is all right.

Q. How did you get that?

A. Through the mail, at 1828 Anza Street, after I paid the money and about a couple of days after the date of the letter.

Mr. SWEENEY.—I offer this in evidence.

Mr. McMILLAN.—Objected to on the grounds that no proper foundation has been laid, nor has it been shown that Robinson authorized or directed or knew anything about the sending of the letter.

The COURT.—Objection overruled.

Mr. McMILLAN.—Exception. [258]

(The document was marked U. S. Exhibit 44, the original of which is before this Honorable Court by stipulation and order, and is the letter referred to in the indictment as Exhibit "O.")

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 45.

That the Court erred in receiving in evidence United States Exhibits 46 and 47 over the objections of defendants as more fully appears as follows:

Mr. SWEENEY.—Q. I will ask you if you are familiar with that letter?

A. Yes. Received it by mail, at 1828 Anza Street, soon after I sent the check, a day or so afterward.

Mr. SWEENEY.—The signature on there has already been proved. I offer this in evidence.

Mr. McMILLAN.—Proper foundation has not been laid, and it has not been shown that Robinson authorized or had anything to do with the sending of the letter.

The COURT.—Q. Objection overruled.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 46, which original exhibit is before this Court by stipulation and order, and is the letter set forth in the indictment as Exhibit "P.")

Signed something on those occasions, I think, but never got copy of whatever I signed. What you show me now I got by mail at 1828 Anza Street. (Certificate of Simon & Co., Sept. 5, 1925.)

(Document was marked U. S. Exhibit 47, and is before this Court on stipulation and order.)

To which ruling the defendants then and there duly and regularly excepted. [259]

EXCEPTION No. 46.

That the Court erred in admitting in evidence

certain testimony over the objections of defendants as will more fully appear as follows: Ernest Hipp, a witness on behalf of the United States, who resided at Santa Clara, and who had a conversation with defendant Goodwin in March, 1925, the following question was asked, objection made and ruling had:

Q. Just state what that conversation was at that time and at that place.

Mr. McMILLAN.—Objected to on behalf of the defendant Robinson as too remote, and as *res inter alios acta*.

Mr. HARRIS.—The same objection.

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Q. At that time, the first thing that took place in this conversation was he inquired of me as to what stock I had. I had previous to that time communicated with the firm of Cromwell Simon & Co., and they had come down to my office in answer to that communication with reference to trading in certain stocks that I had on stocks that they were to buy for me. The first thing they asked was the stocks that I had that I wished to dispose of, that is, to turn in, and I told them, and they stated their position, that is, what they would allow me on my stock, and suggested stocks that I was to buy, which, in their opinion, were good stocks. I finally agreed to buy, purchase, these stocks, that is, on turning in my stock on the purchase of these stocks that they suggested, and they were to be bought on the

partial payment plan. My stocks were to be held as collateral and to be held as first payment on these stocks, and after they had stated their proposition I then told them I would consider the matter and [260] let them know in a few days; but they suggested, in fact urged me, to close the deal at that time, because the market was liable to rise, and the stock be high, and things of that kind, so after a little more conversation I finally closed the deal with them.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 47.

That the Court erred in admitting in evidence certain testimony over the objections of the defendants as will more fully appear as follows:

Q. At that time did you part with any collateral, deliver to them any collateral in pursuance of this agreement?

Mr. McMILLAN.—The defendant Robinson now objects to it as hearsay, the proper foundation not laid, and too remote.

The COURT.—The objections will be overruled.

Mr. McMILLAN.—Exception.

A. I did.

Mr. O'BRIEN.—What was the character of the collateral that you delivered to them, what kind of collateral was it?

Mr. McMILLAN.—The same objection.

The COURT.—The same ruling.

Mr. McMILLAN.—Exception.

A. It consisted of stock in the Durant Motor Corporation, the Star Motor Corporation, the Hayes Hunt Body Works.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 48.

That the Court erred in admitting in evidence United States Exhibit 50 over the objection of defendants as will more fully appear as follows:

The witness testified that he received through the mail [261] from Cromwell Simon & Company, at his home in Santa Clara, in April, 1925, a letter and enclosures marked as aforesaid, to which objection was made on the ground that it was too remote, hearsay, and proper foundation had not been laid.

To which ruling the defendant then and there duly and regularly excepted.

EXCEPTION No. 49.

The Court erred in admitting in evidence United States Exhibit 51 over the objection of the defendants as will more fully appear as follows:

The witness testified that he had received the exhibit at approximately the same time as the exhibit letters above referred to in the month of April, 1925, to which offer objection was made by defendants on the ground stated in objection to Exhibit 50, and which objection was overruled and said exhibit admitted in evidence.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 50.

That the Court erred in admitting in evidence United States Exhibit 52 over the objection of the defendants as will more fully appear as follows:

The witness identified said exhibit and declared that he had received it at his home in Santa Clara from Cromwell Simon through the mail. Upon offer of the exhibit, objection was made by the defendants on the ground stated in the last assignment.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 51.

That the Court erred in receiving in evidence United States Exhibit 55 over the objection of the defendants as will more fully appear as follows:
[262]

Mr. SWEENEY.—I offer in evidence this receipt for stock delivered by Miss Oliver to Mr. Kassmir and Mr. Simon. I offer it in evidence at this time.

Mr. McMILLAN.—The defendant Robinson objects to it on the ground that it is too remote, hearsay, and the proper foundation has not been laid.

The COURT.—How about the signature?

Mr. SWEENEY.—She testified that she saw Mr. Simon sign it.

The COURT.—You saw him sign it?

A. Yes.

Mr. McGEE.—Objected to on behalf of the de-

fendant Goodwin as immaterial, irrelevant, and incompetent, hearsay.

The COURT.—The objection will be overruled, and it will be received in evidence as U. S. exhibit next in order.

Mr. McGEE.—Exception on behalf of Goodwin.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—I will read it. (Reading.)

(The document was marked U. S. Exhibit 55.)

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 52.

The Court erred in admitting in evidence testimony concerning a conversation of Miss Clara Oliver with Mr. Kassmir, over the objection of defendants and which said conversation was that he had come in regard to buying some more stock. That nothing was said the first time about investing in the firm of Cromwell Simon & Company.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 53.

That the Court erred in receiving in evidence United States Exhibit No. 56 over the objection of the defendants as will more [263] fully appear as follows:

Mr. SWEENEY.—Q. I will ask you, Miss Oliver, if you can identify that.

A. Yes.

Mr. SWEENEY.—At this time I would like to

offer in evidence what purports to be a receipt dated June 3, 1925, and directed to this lady, here.

Mr. McMILLAN.—Objected to on behalf of the defendant Robinson, on the ground it is too remote, hearsay, and the proper foundation has not been laid.

The COURT.—The objection will be overruled, and it will be received in evidence as U. S. exhibit next in order.

Mr. McMILLAN.—Exception.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 54.

That the Court erred in receiving in evidence, United States Exhibit 57 over the objection of the defendants as will more fully appear as follows: The witness testified that she was present when the exhibit was opened by her sister. It was in an envelope, stamped, United States mail, and came in the envelope identified. Objection was made on the ground that it was too remote, hearsay, and that the proper foundation had not been laid and which objection was overruled.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 55.

That the Court erred in admitting in evidence United States Exhibit 58 over the objection of the defendants as will more fully appear as follows:

The witness testified that she could identify the

exhibit letter addressed to her sister, and knew of her own knowledge it was received through the mail. At the time of its offer, objection was [264] made on the ground that it was too remote, hearsay, and that the proper foundation had not been laid, which objection was overruled and the letter received in evidence.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 56.

The Court erred in receiving in evidence United States Exhibit 59 over the objection of the defendants as will more fully appear as follows:

The witness testified that the notations made on the exhibit were made by Mr. Kassmir at the time the company was talked of in Reno the 6th or 7th of August. Objection was made on the ground that it was hearsay and the proper foundation had not been laid, which objection was overruled and the notations admitted in evidence.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 57.

That the Court erred in admitting in evidence United States Exhibit 60 over the objection of the defendants as will more fully appear as follows:

The witness testified that the check marked Exhibit 60 was a check signed by Mr. Kassmir, which had come to her from her checking account and that it had been given to Mr. Kassmir himself.

Objection was made by the defendants that no foundation had been laid and no authorization or direction or adoption made by defendants. The objection was overruled and the check admitted in evidence.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 58.

That the Court erred in receiving in evidence United States [265] Exhibit 61 over the objection of defendants as more fully appears as follows:

Mr. SWEENEY.—And I offer this.

The COURT.—Q. Was that signed by Mr. Kassmir, in your presence?

A. Yes.

Q. It was? A. Oh, yes.

The COURT.—It will be received and the objection overruled.

Mr. HARRIS.—I do not think we noted in the record the objection of Mr. Randolph.

The COURT.—I thought someone stated the objection was the same.

Mr. HARRIS.—But they were separate objections. I made the same objections that I made to the check on behalf of the defendant Randolph.

The COURT.—The same ruling.

Mr. HARRIS.—Note an exception.

Mr. McMILLAN.—And the same objection on behalf of the defendant Robinson.

The COURT.—Overruled.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 61.)

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 59.

That the Court erred in admitting in evidence certain testimony of the witness Oliver over the objection of defendants as will more fully appear as follows:

The witness testified, over the objection of defendants which are fully set forth in the bill of exceptions on file herein with this assignment of errors, to conversations with defendant [266] Kassmir about the company and that Mr. Kassmir and Mr. Randolph thought the witness and others should put all the money they could in it.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 60.

That the Court erred in admitting in evidence certain testimony over the objections of the defendants as will more fully appear as follows:

Q. Will you tell us the conversation you had with Mr. Kassmir on that occasion?

Mr. McMILLAN.—The defendant Robinson objects on the ground it is hearsay, and the proper foundation has not been laid.

The COURT.—The objection is overruled.

Mr. HARRIS.—I adopt the objection made on behalf of the defendant Robinson.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

A. The only thing I remember was I asked him if he thought it was a better investment than one of their partial payment, and he said decidedly, yes, and I transferred some other deal or contract I had with him into that; I can't remember right now what it was, because I destroyed all of this data.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 61.

That the Court erred in admitting in evidence United States Exhibit No. 64 over the objection of the defendants as will more fully appear as follows:

The witness identified said exhibit and declared that it was given to her by Mr. Kassmir. Upon the offer thereof in evidence, [267] objection was made on the ground that it was immaterial, irrelevant and incompetent and hearsay, which objection was overruled.

To which ruling the defendants then and there duly and regularly excepted. [268]

EXCEPTION No. 62.

That the Court erred in receiving in evidence U. S. Exhibit No. 65, to the introduction of which exhibit an objection was made upon the same grounds as in the last assignment, to the admission of which exhibit in evidence, the defendants then and there duly excepted.

EXCEPTION No. 63.

That the Court erred in receiving in evidence U. S. Exhibit No. 66, which was a letter received by Miss Oliver through the mails, of the date it bears, to the introduction of which the defendants objected upon the ground that it was incompetent, without foundation, irrelevant and immaterial. To the ruling of the Court admitting the exhibit in evidence, the defendants duly and regularly excepted.

EXCEPTION No. 64.

That the Court erred in admitting in evidence U. S. Exhibit 67, which was a letter addressed to the witness, Miss Oliver, signed by the defendant Randolph, and of the date it bears, to the introduction of which the defendants objected on the ground that it was hearsay and the proper foundation had not been laid. To the ruling admitting said exhibit in evidence, the defendants then and there duly and regularly excepted.

EXCEPTION No. 65.

That the Court erred in admitting in evidence U. S. Exhibit 68, which was a certificate signed by Cromwell Simon & Company, by V. A. Parks, which was received through the mails by the witness Miss Oliver, to the introduction of which the defendants objected upon the ground that it was hearsay and the proper foundation had not been laid. The defendants duly and regularly excepted to the ruling of the Court admitting the exhibit in evidence.

EXCEPTION No. 66.

That the Court erred in admitting in evidence U. S. Exhibit No. 69, which was a certificate for the purchase of stock, signed by Cromwell Simon & Company, by V. A. Parks, which exhibit was objected to upon the grounds set forth in the previous assignment and to the ruling of the Court, the defendants duly and regularly excepted.

EXCEPTION No. 67.

That the Court erred in admitting in evidence U. S. Exhibit No. 70, which was a certificate similar to the one referred to in the previous assignment, to the admission of which exhibit the defendants objected upon the ground that it was incompetent and hearsay and without foundation, which objection was overruled and exception duly and regularly taken.

EXCEPTION No. 68.

That the Court erred in admitting in evidence U. S. Exhibit No. 71, which is a similar certificate of Cromwell Simon & Company, dated August 29, 1925, and which was objected to on the ground that it was hearsay and without the proper foundation, which objection was overruled and to which ruling, exception was duly and regularly taken.

EXCEPTION No. 69.

That the Court erred in receiving in evidence U. S. Exhibit 72, which was a certificate made out to the witness Mrs. Hager, bearing date of the 12th of June, 1925, which was objected to upon the

ground that it was hearsay and the proper foundation had not been laid, which objection was overruled and to which ruling the defendants duly and regularly excepted.

EXCEPTION No. 70.

That the Court erred in admitting in evidence U. S. Exhibits No. 73 and 74, which were certificates of Wesley & [270] Co., made out to the witness, Oliver, and bearing date, October 22, 1925, and November 17, 1925, respectively, which were objected to as hearsay and without proper foundation. The objection was overruled, to which ruling exception was duly and regularly taken.

EXCEPTION No. 71.

That the Court erred in admitting in evidence U. S. Exhibit No. 75, which was a letter received by Miss Oliver, through the mails, bearing the signature of the defendant Kassmir, which letter was objected to upon the ground that it was hearsay, without the proper foundation, and that it was concerning a matter that transpired after any scheme or conspiracy charged, had ended, which more fully appears as follows:

Mr. SWEENEY.—At this time I wish to offer this letter in evidence.

Mr. McMILLAN.—On behalf of the defendant Robinson it is objected to as hearsay, the proper foundation has not been laid, and we ask that that evidence be limited and restricted to the defendant Kassmir.

Mr. HARRIS.—The defendant Randolph adopts the objection of the defendant Robinson, and, in addition, calls the Court's attention to the blanket objection, that it is after the time any scheme or conspiracy had ended.

The COURT.—What is the date that appears upon that?

Mr. SWEENEY.—February 12, 1926.

The COURT.—You said that you were endeavoring to make proof to March 8, 1927, so the objection will be overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

The COURT.—It will be received in evidence as Government's [271] exhibit next in order.

(The document was marked U. S. Exhibit 75.)

To the reception of said exhibit in evidence, the defendants duly and regularly excepted.

EXCEPTION No. 72.

That the Court erred in receiving in evidence U. S. Exhibit No. 76, which was a letter referred to in the indictment as Exhibit "FF," dated March 15, 1926, received by the witness, Miss Oliver, through the mail, and which was objected to on the ground that it was hearsay and no proper foundation, which objection was overruled, and to which ruling the defendants duly and regularly excepted.

EXCEPTION No. 73.

That the Court erred in receiving in evidence U. S. Exhibit 77, a letter received through the mail by Miss Oliver, dated May 5, which exhibit was ob-

jected to as hearsay, without foundation and incompetent, which objection was overruled, and to which ruling the defendants duly and regularly excepted.

EXCEPTION No. 74.

The Court erred in receiving in evidence U. S. Exhibit 68, which was a letter received through the mail about April 28, by Miss Oliver, signed by the defendant Kassmir, which exhibit was objected to as hearsay and without proper foundation; and which objection was overruled, and to which ruling an exception was duly and regularly taken.

EXCEPTION No. 75.

The Court erred in receiving in evidence U. S. Exhibit 79, which was a letter received by Miss Oliver, dated July 31, 1926, signed by the defendant Orton E. Goodwin, and which letter was objected to on the ground that it was hearsay and without proper foundation, and as incompetent, which objection was overruled, [272] and to which ruling the defendants duly and regularly excepted.

EXCEPTION No. 76.

That the Court erred in limiting the cross-examination of the witness, Miss Oliver, which more fully appears as follows:

Mr. HARRIS.—One of these transactions that you wanted to keep from your sister's mind and attention occurred some time back along in June or May, did it not?

Mr. SWEENEY.—That is objected to as imma-

terial, irrelevant and incompetent, and particularly that it has been asked and answered.

Mr. HARRIS.—This is a preliminary question, and will tie up perfectly with counsel's examination.

The COURT.—I cannot see the object of that question, how it bears on the issues.

Mr. HARRIS.—If I disclose the object I might as well not examine on it.

The COURT.—I will sustain the objection to it.

Mr. HARRIS.—Exception to the Court's ruling.

To which ruling of the Court, the defendants duly and regularly excepted.

EXCEPTION No. 77.

That the Court erred in receiving in evidence U. S. Exhibit No. 81, which was a signature card of Cromwell Simon & Company and a copy of the bank account of the Pacific National Bank, which was objected to as hearsay and without foundation, which objection was overruled and to which ruling the defendants duly and regularly excepted.

EXCEPTION No. 78.

That the Court erred in the receiving in evidence of [273] Government's Exhibits 85 and 86, to which the defendants objected as hearsay and without foundation, and which exhibits were marked Exhibits "HH" and "II" in the indictment.

The objection was overruled, and to which overruling the defendants duly and regularly excepted.

EXCEPTION No. 79.

That the Court erred in receiving in evidence the

testimony of the witness Mary Christiansen, with respect to Government Exhibit No. 28, which testimony was objected to upon the ground that it was a privileged communication, as more fully appears as follows:

Mr. HARRIS.—If your Honor please, I assume that this comes under that blanket objection to all of Mrs. Christiansen's previous testimony, that she is a servant and stenographer, and therefore it is privileged; we stipulated once that all of her testimony would be subject to that objection.

The COURT.—That is satisfactory.

Mr. HARRIS.—And it is overruled and an exception noted.

EXCEPTION No. 80.

That the Court erred in admitting certain testimony over the objection of the defendants, as more fully appears as follows:

The COURT.—I have here the record showing the circumstances under which U. S. Exhibit was received in evidence, that this letter was presented at the hearing by Mr. Cromwell Simon, Mr. Harry Kassmir being present.

Mr. SWEENEY.—Yes.

The COURT.—Mr. Sweeney will be permitted to read that exhibit. The objection of Mr. McDonald is overruled. Do you want to make an objection, Mr. Harris?

Mr. HARRIS.—I have made an objection, your Honor. I renew [274] the objection formerly made, and ask the Court at this time to direct the jury that that should not be held as testimony.

against the defendant Randolph, on the grounds that I have tested.

Mr. McMILLAN.—We join in that objection, your Honor.

Mr. SWEENEY.—Those motions have already been made and your Honor has ruled on them, and it is part of the *res gestae* of the whole scheme.

The COURT.—The reason why it was received is shown in the record. The matter of instruction of the jury, that is a matter of later instruction. Mr. Sweeney will be allowed to read the letter at this time.

Mr. SWEENEY.—I will read it. This is U. S. Exhibit 8. (Reading.)

Mr. HARRIS.—I do not want to interrupt counsel, but I do want the record to show that the defendant Randolph excepts to the ruling of the Court refusing to instruct the jury as to the manner in which this is received, and to the permission of the District Attorney to read it.

Mr. McMILLAN.—And may we have the same exception, your Honor?

The COURT.—Yes.

EXCEPTION No. 81.

That the Court erred in receiving in evidence U. S. Exhibit No. 89, which was a certificate of Cromwell Simon & Company, dated August 4, 1925, issued to George Bernard, which certificate was objected to as incompetent, irrelevant, immaterial, and hearsay, and which objection was overruled, and to which overruling, an exception was duly and regularly taken.

EXCEPTION No. 82.

That the Court erred in admitting in evidence, certain testimony over objection of defendants, as follows: [275]

Q. Will you tell us what Mr. Randolph and Mr. Kassmir said on that occasion?

Mr. McMILLAN.—Objected to on the ground that it is immaterial, irrelevant, incompetent, hearsay, and also that it is too remote, so far as the defendant Robinson is concerned.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

To which ruling the defendants then and there duly and regularly excepted.

EXCEPTION No. 83.

That the Court erred in admitting in evidence certain testimony over the objection of the defendants, as more fully appears as follows:

Q. Go ahead and tell us the conversation you had on that occasion.

Mr. McMILLAN.—Objected to on the ground it is immaterial, irrelevant, and incompetent, and hearsay.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

To which ruling the defendants then and there duly and regularly excepted. [276]

EXCEPTION No. 84.

That the Court erred in admitting in evidence certain testimony over the objections of these defendants, as will more fully appear, as follows; and

EXCEPTION No. 85.

likewise erred in denying motion to strike out the testimony given, as will more fully appear, as follows:

Q. Can you give me the approximate time?

A. I think it was the latter part of August, along in August.

Q. What was the conversation had on that occasion?

Mr. McGEE.—The defendant Goodwin objects to this as immaterial, irrelevant, and incompetent, and hearsay as far as the defendant Goodwin is concerned, and upon the further ground that the conversation took place after Goodwin had severed his employment with Cromwell Simon & Company.

Mr. McMILLAN.—The defendant Robinson adopts the objection.

The COURT.—The objection is overruled.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Would you answer the question?

A. What was the question?

Mr. SWEENEY.—Would your Honor have the reporter read the question?

The COURT.—Read the question.

(The record was here read by the reporter.)

A. They told us they had established a bank in Reno, and that it would be quite an asset to us, because we would receive from 8 to 12 per cent on our money quarterly, and also on the common stock we would get at least 25 per cent—

Mr. HARRIS.—Just a moment, I move to strike out that testimony as not being competent in this proceeding, because it is not [277] one of the false pretenses alleged to have been made by any of the defendants in the alleged scheme to defraud which is set forth in the indictment, and therefore my defendant has not had an opportunity to prepare a defense to this.

Mr. McDONALD.—The defendant Kassmir joins in the objection.

Mr. McGEE.—The defendant Goodwin joins in the objection, likewise.

Mr. McMILLAN.—And the defendant Robinson joins in it.

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McGEE.—Exception.

Mr. McDONALD.—Exception.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. You may continue.

A. He, Mr. Randolph said, “Harry, don’t be too optimistic,” and Mr. Kassmir says, “No, I am not. I know it, and it will be a good investment for them.” So they took our certificates and made us new certificates later on.

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 86.

That the Court erred in admitting in evidence certain testimony over the objections of these defendants, as will more fully appear, as follows:

Q. What was said and done on the occasion of that visit, Miss Durham?

Mr. McGEE.—The defendant Goodwin objects on the ground it is immaterial, irrelevant, and incompetent, and hearsay, as far as the defendant Goodwin is concerned, he having severed his employment with Cromwell Simon & Company on July 2, 1925, and it not being binding on him. [278]

Mr. HARRIS.—We object on behalf of the defendant Robinson on the ground the foundation has not been laid as to time.

Mr. McDONALD.—The defendant Kassmir joins in that objection.

Mr. SWEENEY.—Q. Can you fix the time of this visit, Miss Durham—approximately?

Q. Pardon me?

A. In December.

Q. Now, will you just tell us what was said and done on that occasion?

The COURT.—The objection is overruled.

Mr. McGEE.—The defendant Goodwin renews the objection made to the previous question.

The COURT.—The same ruling.

Mr. HARRIS.—If your Honor please, I want the objection there that the foundation has not been laid as yet.

The COURT.—Q. What year was that, the summer of what year?

A. In 1925.

The COURT.—The objection is overruled.

Mr. McGEE.—Exception.

Mr. SWEENEY.—Continue, Miss Durham.

A. We went to the office and the papers, I think, were all made up ready for signature.

Q. What conversation was had at that time?

A. Kassmir said, "Now, we have got everything all ready, and Mr. Robinson is going to get the loan for you, and really I think he has got the loan—haven't you, Mr. Robinson?" And he said, "Yes, it is made over in Oakland; we have secured it at 7 per cent and pay the interest monthly." Now, he says to my aunt, "Sign there."

To which rulings, defendants then and there duly and regularly excepted. [279]

EXCEPTION No. 87.

That the Court erred in admitting in evidence Government's Exhibit No. 4 for identification, over the objections of these defendants, as will more fully appear, as follows:

Mr. SWEENEY.—If your Honor please, I want to offer in evidence Government's Exhibit No. 4 for identification as Government's exhibit next in order.

Mr. McGEE.—I object to it on behalf of the defendant Goodwin as immaterial, irrelevant, and incompetent, and hearsay as far as the defendant Goodwin is concerned, it appearing to be a certificate issued by Cromwell & Co., dated the 7th day of August, 1925; Goodwin never was employed by Cromwell & Co., and he cannot be bound by any transactions of that concern.

Mr. McMILLAN.—On behalf of Robinson, it is objected to as hearsay, and the proper foundation has not been laid.

Mr. HARRIS.—I adopt the objections already made on behalf of the defendant Randolph.

The COURT.—The objection is overruled and it will be received in evidence as Government's exhibit next in order.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Mr. McGEE.—Exception.

(The document was marked U. S. Exhibit 91.)

To which rulings defendants then and there duly and regularly excepted.

EXCEPTION No. 88.

That the Court erred in admitting in evidence U. S. Exhibit 40 for identification over the objections of these defendants, as will more fully appear, as follows:

Mr. SWEENEY.—At this time, your Honor, I wish to offer in [280] evidence U. S. Exhibit No. 40 for identification.

Mr. McGEE.—I make the same objection as I made to the offer of the previous certificate of Cromwell & Company.

Mr. HARRIS.—The same objection.

Mr. McMILLAN.—The same objection on behalf of the defendant Robinson.

The COURT.—The same ruling, and it will be received as U. S. Exhibit next in order.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 92.)

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 89.

That the Court erred in admitting in evidence certain testimony over the objections of these defendants, as will more fully appear as follows:

Q. Did you have a conversation with Mr. Kassmir concerning the certificates? A. Yes.

Q. What was the conversation you had with them?

Mr. HARRIS.—I do not understand even approximately what time this is. I will ask counsel to lay the foundation a little bit further with the witness.

Mr. SWEENEY.—Q. At what time was this conversation with Mr. Kassmir?

The COURT.—Q. What month or what year?

A. November or December.

Q. Of what year? A. 1925.

Mr. HARRIS.—Then, if your Honor please, I reserve that blanket objection on the ground that any conspiracy and scheme [281] had ended then; according to your Honor's ruling, the District Attorney will have to connect that up.

Mr. McMILLAN.—We make the same objection.

The COURT.—The District Attorney has made the statement to the Court he was going to have it continue until the 8th of March, 1927.

Mr. HARRIS.—I merely want to preserve the record on that point, exception.

Mr. SWEENEY.—May the reporter read the question?

The COURT.—Read the question.

(Last question repeated by the reporter.)

Mr. SWEENEY.—Go ahead.

A. I phoned Mr. Kassmir at Mr. Robinson's office and told him—

Q. Just tell the conversation.

A. (Continuing.) —to come over to the house.

Thereupon the witness continued to give a conversation which is fully set forth in the bill of exceptions on file herein, and to which reference is hereby expressly made.

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 90.

That the Court erred in admitting in evidence Government's Exhibit No. 24 for identification, over the objections of these defendants, as will more fully appear, as follows:

Q. I show you Government's Exhibit No. 24 for identification, Miss Durham, and ask you if you can identify that. A. I can.

Q. How did you receive that?

A. By mail at 5838 Birch Court, Oakland.

Q. When? A. In February.

Mr. McGEE.—Q. What is the date?

Mr. SWEENEY.—February 2, 1926. [282]

Mr. SWEENEY.—I want to offer in evidence Government's Exhibit No. 24 for Identification.

Mr. McGEE.—Defendant Goodwin objects on the ground it is immaterial, irrelevant, and incompetent, and hearsay as far as the defendant Good-

win is concerned, it is a letter written on the stationery of Charles Wesley Company, with which he was never connected, and subsequent to July 2, 1925, at which time he severed his connection with Cromwell Simon & Co.

Mr. McMILLAN.—The defendant Robinson objects on the ground it is hearsay, and the proper foundation has not been laid as to him.

Mr. McDONALD.—The defendant Kassmir joins in the last objection.

The COURT.—The objections are overruled, and it will be received in evidence as Government's exhibit next in order.

Mr. McMILLAN.—Exception.

Mr. McGEE.—Exception.

Mr. McDONALD.—Exception.

(The document was marked U. S. Exhibit 95.)

To which ruling, defendants then and there duly and regularly excepted.

EXCEPTION No. 91.

That the Court erred in admitting in evidence U. S. Exhibit 96, over the objections of these defendants, as will more fully appear, as follows:

Mr. SWEENEY.—Q. Do you know when you received it, approximately?

Mr. HARRIS.—She has already stated some time in February. Objected to as already asked and answered.

Mr. SWEENEY.—Q. What year?

A. 1926. [283]

Mr. SWEENEY.—I offer it in evidence as Gov-

ernment's exhibit next in order, the signature having been admitted.

Mr. McGEE.—The defendant Goodwin objects on the ground it is immaterial, irrelevant, and incompetent, and hearsay as far as the defendant Goodwin is concerned, it being subsequent to the time that the defendant Goodwin left the employ of Cromwell Simon & Co.

The COURT.—The objection is overruled.

Mr. McMILLAN.—On behalf of the defendant Robinson I will also object on the same grounds—I will object on the same grounds—I will object on the ground it is hearsay and the proper foundation not laid.

The COURT.—Overruled.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

The COURT.—It will be received in evidence as Government's exhibit next in order.

(The document was marked U. S. Exhibit 96.)

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 92.

That the Court erred in admitting in evidence U. S. Exhibit 97, over the objections of these defendants, as will more fully appear, as follows:

Q. I will show you this letter, U. S. Exhibit 25 for Identification, and ask you if you can identify that. A. I can.

Q. How did you receive that?

A. Through the mails by special delivery at 5838 Birch Court, Oakland.

Q. Can you identify that envelope? A. I do.

The COURT.—Q. That was the envelope in which the letter came, was it?

A. Yes. [284]

Mr. SWEENEY.—At this time I offer in evidence Government's Exhibit No. 25 for Identification as Government's exhibit next in order.

Mr. McGEE.—The defendant Goodwin objects on the ground it is immaterial, irrelevant, and incompetent, and hearsay as far as the defendant is concerned. This letter is dated February 19, 1926, and is on the letter-head of the Charles Wesley Company; Goodwin never was in the employ of Charles Wesley Company, or of Cromwell Company.

Mr. SWEENEY.—This is on the letter-head of Allen Company.

Mr. McGEE.—I mean Allen Company; I object to it as immaterial, irrelevant, and incompetent, and I repeat for the record the objection previously made.

Mr. SWEENEY.—That does not include that Goodwin did not work for the Allen Company?

Mr. McGEE.—Yes.

Mr. McMILLAN.—The defendant Robinson objects that the proper foundation has not been laid, and it is hearsay.

Mr. HARRIS.—The defendant Randolph objects on the ground that it is hearsay as far as he is concerned, and beyond the time of consummation of any scheme or conspiracy.

The COURT.—The objection will be overruled

and it will be received in evidence as Government's exhibit next in order.

Mr. HARRIS.—Exception.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 97.)

To which ruling, defendants then and there duly and regularly excepted.

EXCEPTION No. 93.

That the Court erred in admitting in evidence U. S. [285] Exhibit 98 over the objections of these defendants, as will more fully appear, as follows:

Mr. SWEENEY.—Q. I will show you Government's Exhibit No. 26 for Identification, and ask you if you can identify that.

A. I can.

Q. How did you receive it?

A. By mail, special delivery, at 5838 Birch Court, Oakland.

Q. When?

A. I won't be positive, I think Sunday.

Q. I know, but what date, what time of the year?

A. It must have been in March.

Q. Of what year? A. 1926.

Mr. SWEENEY.—The signature is already identified, your Honor.

The COURT.—That envelope was received with it at the same time?

Mr. SWEENEY.—Q. Did this letter come in this envelope?

A. Yes.

Mr. SWEENEY.—At this time I want to offer in evidence Government's Exhibit No. 26 for Identification.

Mr. McGEE.—The defendant Goodwin objects on the ground it is immaterial, irrelevant, incompetent, and hearsay, so far as the defendant Goodwin is concerned.

Mr. HARRIS.—The same objection.

Mr. McMILLAN.—The same objection.

The COURT.—The objection is overruled and it will be received in evidence as Government's exhibit next in order.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

(The document was marked U. S. Exhibit 98.)

To which ruling, defendants then and there duly and [286] regularly excepted.

EXCEPTION No. 94.

That the Court erred in admitting in evidence U. S. Exhibit 99, over the objections of these defendants, as will more fully appear, as follows:

Mr. SWEENEY.—I will show you that letter and ask you *if recognize* it.

A. Yes.

Q. How did you receive it?

A. By mail, at 5838 Birch Court.

Q. Where? A. Oakland.

Q. When did you receive it?

A. In April, it might have been in the last of March or April.

Q. What year? A. 1926.

Mr. SWEENEY.—At this time, if your Honor please, I would like to offer in evidence a letter dated April 19, 1926, as Government's exhibit next in order.

Mr. McGEE.—On behalf of the defendant Goodwin the objection is made that it is immaterial, irrelevant, and incompetent, and hearsay, as far as the defendant Goodwin is concerned.

The COURT.—Was that letter received through the mail?

A. Yes.

The COURT.—Overruled.

Mr. McGEE.—Exception.

Mr. McMILLAN.—As to the defendant Robinson, it is objected to as hearsay, and the proper foundation not laid.

The COURT.—The same ruling on the objection.

Mr. McMILLAN.—Exception.

The COURT.—It will be received in evidence as Government's exhibit next in order.

(The document was marked U. S. Exhibit 99.)

To which rulings, defendants then and there duly and regularly excepted. [287]

EXCEPTION No. 95.

That the Court erred in admitting in evidence U. S. Exhibit 100, over the objections of these defendants, as will more fully appear, as follows:

Q. I show you this letter, and ask you if you can identify that. A. I can.

Q. How did you receive this letter?

A. By mail at 5838 Birch Court, Oakland.

Q. Can you identify the envelope? A. Yes.

Q. Where did you receive it? A. Oakland.

Q. When, as best you can remember?

A. Well, April or May.

Q. What year? A. 1926.

Mr. SWEENEY.—We offer it in evidence as U. S. exhibit next in order, if your Honor please.

Mr. McGEE.—That is objected to on behalf of the defendant Goodwin as immaterial, irrelevant, and incompetent, and hearsay, as far as he is concerned.

Mr. McMILLAN.—That is objected to by the defendant Robinson on the ground it is hearsay and too remote, and the proper foundation has not been laid.

Mr. HARRIS.—That is objected to by the defendant Randolph on the ground it is too remote.

The COURT.—The objection will be overruled and it will be received as Government's exhibit next in order.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 100.)

EXCEPTION No. 96.

That the Court erred in admitting in evidence U. S. Exhibit 101, over the objections of these de-

fendants, as will [288] more fully appear, as follows:

The witness testified the letter was addressed to Mrs. Emily A. Beans, and came through the mail, and was received at 5838 Birch Court, Oakland, in May or June, in the envelope identified. Thereupon the following objections were made and rulings had:

Mr. McMILLAN.—The defendant Robinson objects to it as too remote, and the proper foundation not being laid.

Mr. SWEENEY.—I have not offered it yet. At this time I offer in evidence Government's Exhibit No. 27 for Identification.

Mr. McGEE.—Defendant Goodwin objects on the ground it is immaterial, irrelevant, and incompetent, and hearsay as far as the defendant Goodwin is concerned, and it is dated June 26, at Pasadena, and as far as the defendant Goodwin is concerned it is hearsay.

Mr. McMILLAN.—We renew the objection made before the offer as too remote, and the proper foundation not laid.

The COURT.—The objection will be overruled and it will be received in evidence as Government's exhibit next in order.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 101.)

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 97.

That the Court erred in admitting in evidence U. S. Exhibit 102, over the objections of these defendants, as will more fully appear as follows:

The witness testified the letter was received by mail in the envelope identified, in June or July of 1926, at 5838 [289] Birch Court, Oakland.

Mr. SWEENEY.—The signature has already been identified, your Honor. At this time I want to offer in evidence Government's Exhibit 28 for Identification.

Mr. McGEE.—The defendant Goodwin objects on the ground it is immaterial, irrelevant and incompetent, and hearsay as far as the defendant Goodwin is concerned.

Mr. McMILLAN.—The same objection as far as Robinson is concerned.

Mr. HARRIS.—The defendant Randolph also objects on the ground it is hearsay as to him, and too remote.

The COURT.—The objection is overruled, and it will be received in evidence as Government's exhibit next in order.

Mr. HARRIS.—Exception.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 102.)

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 98.

That the Court erred in admitting in evidence U. S. Exhibit 103, over the objections of these de-

fendants, as will more fully appear, as follows:

The witness testified that two papers identified by her were given to her by Mr. Robinson.

The COURT.—Did Mr. Robinson hand you those two papers?

A. Yes.

Mr. SWEENEY.—At this time I offer in evidence Government's Exhibit No. 29 for Identification, the signature having been identified.

Mr. HARRIS.—That is objected to on behalf of the defendant Randolph on the ground no foundation has been laid, immaterial, [290] irrelevant, and incompetent, and hearsay as to him.

Mr. McGEE.—Objected to on the ground it is immaterial, irrelevant, and incompetent, and hearsay, as far as the defendant Goodwin is concerned, no foundation has been laid. This refers to one of the counts of the indictment which alleges that it was sent through the mail, and, according to the testimony of the witness it did not go through the mail, and I object to it being introduced in evidence on that ground.

Mr. McMILLAN.—Objected to on the latter ground, only, that the proper foundation has not been laid to show that offense has been committed, whatever, against the United States under the allegations of this indictment, so far as that letter is concerned.

Mr. McDONALD.—The objection will be overruled, and it will be received as Government's exhibit next in order.

Mr. McGEE.—Exception.

Mr. McDONALD.—Exception.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 103.)

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 99.

That the Court erred in admitting in evidence U. S. Exhibit 104, over the objections of these defendants, as will more fully appear, as follows:

The witness, Allen, testified that he was an attorney at law, with offices in Oakland, 902 Syndicate Building, that he could identify the letter mentioned, and that it was received in the mails at his office at approximately the time of its date, March 8, 1927, and that he could identify the envelope which came [291] with it.

Mr. SWEENEY.—If your Honor please, I want to offer in evidence Government's Exhibit No. 39 for Identification.

Mr. McGEE.—On behalf of the defendant Goodwin, it is objected to as immaterial, irrelevant, and incompetent, and hearsay as far as Goodwin is concerned, it being dated March, 1927, a date subsequent to the time Goodwin severed his connection with Cromwell Simon & Co.

Mr. HARRIS.—I would like to note the objection that it is too remote as to the defendant Randolph.

The COURT.—The objection will be overruled, and it will be received in evidence as U. S. exhibit next in order.

Mr. HARRIS.—Exception.

Mr. McGEE.—Exception.

(The document was marked U. S. Exhibit 104.)

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 100.

That the Court erred in admitting into evidence certain testimony over the objections of these defendants, as will more fully appear, as follows:

Q. Miss Durham, how much money did you invest in Cromwell Simon & Co.?

Mr. McGEE.—Objected to as immaterial, irrelevant, and incompetent, and on the further ground it is hearsay as far as the defendant Goodwin is concerned, and it does not respond to any allegation contained in the indictment in this case.

Mr. McDONALD.—The further objection it is assuming something not in evidence.

Mr. McGEE.—And further, it calls for the conclusion of the witness. [292]

Mr. HARRIS.—I adopt the objection, and assign it as an attempt to prejudice the mind of the jury.

Mr. McMILLAN.—The defendant Robinson adopts the objection.

The COURT.—Read the question. (Last question repeated by the reporter.) The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Mr. McGEE.—Exception.

A. Do I understand the question to be as to myself?

Mr. SWEENEY.—Q. You, yourself.

A. \$3,000.

To which ruling, defendants then and there duly and regularly objected.

EXCEPTION No. 101.

That the Court erred in admitting into evidence certain testimony over the objections of these defendants, as will more fully appear, as follows:

Q. How much did yourself and your aunt invest, if you know of your own knowledge?

A. About \$12,060-odd—\$12,056.

Q. Did you ever get any of that money back?

Mr. McGEE.—Objected to as immaterial, irrelevant, and incompetent, and hearsay as far as the defendant Goodwin is concerned, and it does not respond to any allegation of the indictment.

Mr. McDONALD.—The same objection on behalf of the defendant Kassmir.

Mr. McMILLAN.—The same objection on behalf of the defendant Robinson.

The COURT.—The objection is overruled.

Mr. McGEE.—Exception.

Mr. McDONALD.—Exception.

Mr. McMILLAN.—Exception. [293]

A. No.

To which ruling, defendants then and there duly and regularly excepted.

EXCEPTION No. 102.

That the Court erred in limiting the cross-exami-

nation of the witness, Durham, and in sustaining the objection to questions asked on cross-examination, as will more fully appear, as follows:

Q. How many times did you see Mrs. Williamson about selling her stock? Maybe that would clear your mind.

Mr. SWEENEY.—That is objected to as not proper cross-examination, your Honor.

Mr. HARRIS.—I am trying to fix the date.

Mr. SWEENEY.—Mrs. Williamson has not entered into this controversy, at all.

The COURT.—I will sustain the objection.

Mr. HARRIS.—Q. Do you know how many times you saw Mr. Williamson about selling stock?

Mr. SWEENEY.—Objected to on the ground it is immaterial, irrelevant, and incompetent, and not proper cross-examination.

Mr. HARRIS.—I am testing the memory of the witness.

The COURT.—I will sustain the objection.

Mr. HARRIS.—Exception to both of the Court's rulings, if your Honor please.

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 103.

That the Court erred in limiting the cross-examination of the witness, Durham, and in sustaining objections to questions asked, as will more fully appear, as follows:

Q. But you took him around to some other people besides your [294] clients, then: Is that it?

Mr. SWEENEY.—Objected to as not proper cross-examination.

Mr. HARRIS.—I think it is, if your Honor please. This woman has given the impression to the jury that she was imposed upon, and I desire to show that she had business training, and knew what she was doing.

The COURT.—I will sustain the objection.

Mr. HARRIS.—Exception.

A. Two other persons—

The COURT.—Just a minute. The answer goes out.

To which rulings, defendants then and there duly and regularly excepted.

EXCEPTION No. 104.

That the Court erred in limiting the cross-examination of the witness, Durham, and in sustaining objections to questions on cross-examination, as will more fully appear, as follows:

Mr. HARRIS.—Q. Are you familiar with what a mortgage looks like, from what it contains?

Mr. SWEENEY.—The same objection, immaterial, irrelevant, and incompetent, and it is not proper cross-examination.

The COURT.—I will sustain the objection.

Mr. HARRIS.—I will except to the Court's ruling.

To which ruling, defendants then and there duly and regularly excepted. [295]

EXCEPTION No. 105.

The Court erred in admitting in evidence certain

testimony over the objections of the defendants, which more fully appears as follows:

Mr. SWEENEY.—Q. Of your own knowledge, how many letters did your aunt, Mrs. Beans, write to Mr. Randolph in Los Angeles?

Mr. HARRIS.—That is objected to as immaterial, irrelevant, and incompetent, and as being indefinite as to time.

Mr. McGEE.—The defendant Goodwin objects on the grounds stated in the previous objection to the last question.

Mr. SWEENEY.—Q. After April 1, 1925, Miss Durham.

Mr. HARRIS.—That is still objected to.

The COURT.—The objection is overruled.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

A. Five or six.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 106.

That the Court erred in admitting in evidence certain testimony over the objection of the defendant, which more fully appears as follows:

Q. What was the conversation you had at that time with Mr. Randolph or Mr. Kassmir and Mr. Randolph?

Mr. McGEE.—The defendant Goodwin objects to that on the ground it is immaterial, irrelevant, and incompetent, and hearsay as far as the defendant Goodwin is concerned, he not being an employee of Cromwell Simon & Co. at that time.

Mr. HARRIS.—That is objected to as assuming something not in evidence. There is no evidence here of any conversation with [296] Mr. Randolph and Mr. Kassmir concerning this \$1500 loan.

Mr. SWEENEY.—This lady testified that she sat in Mr. Robinson's office for a considerable length of time with the door ajar, in which the \$1500 was the subject of the conversation.

The COURT.—The objection is overruled.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 107.

The Court erred in admitting in evidence certain testimony over the objection of the defendant, which more fully appears as follows:

Mr. SWEENEY.—I will attempt to do that later.

Q. How many mortgaged were there on the house, if you know, at Birch Court?

Mr. McDONALD.—Objected to as immaterial, irrelevant, and incompetent, and not within the issues laid in this indictment.

Mr. McGEE.—The defendant Goodwin makes the same objection, and that it is hearsay.

Mr. HARRIS.—The same objection.

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McGEE.—Exception.

Mr. McDONALD.—Exception.

To which ruling of the Court the defendant then and there duly and regularly excepted. [297]

EXCEPTION No. 108.

The Court erred in admitting in evidence certain testimony over the objection of the defendant, which more fully appears as follows:

Q. Did you ever do any printing for the Charles Wesley Company at Los Angeles? A. Yes.

Q. Who ordered that printing?

Mr. McGEE.—The defendant Goodwin objects on the ground it is immaterial, irrelevant, and incompetent, and hearsay as far as the defendant Goodwin is concerned, he not having been in any way connected with Charles Wesley Company.

The COURT.—The objection is overruled.

Mr. McGEE.—Exception.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 109.

That the Court erred in limiting the cross-examination of the witness McClintock, as more fully appears as follows:

Q. Mr. Kassmir told you that he would arrange to get you a job down in Los Angeles?

Mr. SWEENEY.—Objected to as immaterial, irrelevant, and incompetent, and assuming something not in evidence.

Mr. HARRIS.—I can assume, upon cross-examination, anything for the purpose of the cross-examination. I do not have to stick to the evidence; and, as counsel has made that objection so many times—

The COURT.—I will sustain the objection.

To which ruling of the Court the defendant then and there duly and regularly excepted. [298]

EXCEPTION No. 110.

That the Court erred in limiting the cross-examination of the witness W. C. Owens, as more fully appears as follows:

Q. Did you follow Cromwell Simon, or Mr. Kassmir, or either one or both of them to the stock market in the morning to see whether they made purchases of stock? A. No.

Mr. SWEENEY.—Objected to as immaterial, irrelevant, and incompetent, and assuming something not in evidence, that Mr. Cromwell Simon or Mr. Kassmir went to the stock office in the morning.

The COURT.—I will sustain the objection.

Mr. HARRIS.—Exception.

Q. Did you go to the Corporation Department to ascertain the standing of the concern? A. No.

Q. You saw an ordinary and usual brokerage business there conducted in the ordinary and usual way, and you assumed it was conducted that way?

Mr. SWEENEY.—Objected to as immaterial, irrelevant, and incompetent, and calling for the conclusion of the witness, that it was an ordinary brokerage firm.

The COURT.—I will sustain the objection.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 111.

The Court erred in admitting in evidence certain

testimony over the objection of the defendant, which more fully appears as follows:

Q. Did you conduct an investigation of these defendants, Mr. Maderia?

Mr. McGEE.—That is objected to as immaterial, irrelevant [299] and incompetent, and hearsay.

Mr. HARRIS.—The same objection.

The COURT.—The objection is overruled.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

A. I conducted an investigation into Cromwell Simon & Co., in which these particular defendants were interested, and connected with.

Mr. HARRIS.—Just a moment, I ask that the answer “these defendants were interested” be stricken out as calling for a conclusion of the witness.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 112.

The Court erred in admitting in evidence certain testimony over the objection of the defendant, which more fully appears as follows:

Q. Did you, on that occasion, have a conversation with Mr. Randolph relative to the Cromwell Simon Company of San Francisco?

Mr. McMILLAN.—As to the defendant Robinson, that is objected to on the ground it is hearsay. Have you called for the conversation?

Mr. SWEENEY.—No, I am asking if he had a conversation.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 113.

The Court erred in admitting in evidence U. S. Exhibit No. 107 for the reasons that it is immaterial, irrelevant, and hearsay as to the defendants.

To which ruling of the Court the defendant then and there duly and regularly excepted. [300]

EXCEPTION No. 114.

The Court erred in admitting in evidence certain testimony over the objection of the defendant, which more fully appears as follows:

Q. What was the conversation had on that occasion?

Mr. McDONALD.—Objected to as immaterial, irrelevant, and incompetent, and the proper foundation has not been laid; this is a conversation that took place between an officer and a man in custody, and it has not been shown that it was free and voluntary, or without promise of immunity or reward.

Mr. McGEE.—I make the objection, unless the district attorney makes a stipulation in regard to the conversation that he did as to the other defendants.

Mr. SWEENEY.—That stipulation will be made. The conversation will bind only Mr. Kassmir, and no one else.

Mr. HARRIS.—We object that no foundation has been laid for the testimony of the witness under the circumstances that he has related.

Mr. McMILLAN.—We join in that objection.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 115.

The Court erred in admitting in evidence U. S. Exhibit No. 110, which is alleged to be a letter written by the defendant Robinson, the objection to which more fully appears as follows:

The COURT.—I do not see it in the record.

Mr. SWEENEY.—Q. Will you look at this? I will show you [301] this letter and ask you if you can identify it.

A. Yes.

Q. Is it a part of your files?

A. A part of our files.

Mr. SWEENEY.—Will the signature be admitted, Mr. McMillan?

Mr. McMILLAN.—Yes.

Mr. SWEENEY.—At this time I want to offer in evidence a letter; I will present it to your Honor, so that your Honor can read it and see its relevancy.

The COURT.—Is it admitted by the other defendants that this is the signature of Mr. Robinson?

Mr. HARRIS.—If Mr. McMillan says it is we admit it.

The COURT.—What is your attitude, Mr. McDonald?

Mr. McDONALD.—If Mr. McMillan says it is, we will admit it.

Mr. McGEE.—I make the same admission, except that Goodwin objects on the ground it is immaterial, irrelevant, and incompetent, and hearsay as far as the defendant Goodwin is concerned, it being at a date subsequent to the time that Goodwin severed all connection with Cromwell Simon & Company.

The COURT.—Are you offering it?

Mr. SWEENEY.—Yes.

Mr. HARRIS.—I object to it solely on the ground that it does not point to any of the alleged offenses set forth in the indictment, it is not one of the false pretenses set forth, and that none of these defendants are charged in any way with this transaction, immaterial, irrelevant, and incompetent.

The COURT.—The objection is overruled, and it will be received in evidence as Government's exhibit next in order.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

To which ruling of the Court the defendant then and there duly and regularly excepted. [302]

EXCEPTION No. 116.

That the Court erred in overruling and denying a motion on behalf of defendants Robinson and Randolph individually, which said motions and the rulings denying same more fully appears as follows:

Mr. McMILLAN.—At this time, at the close of

the Government's evidence in chief, the defendant Samuel H. Robinson moves this Court to direct the jury to find him not guilty upon each and every count contained in said indictment, excepting of course, counts 1 and 34, upon the following grounds:

1. That there is no evidence of sufficient substantiality to support a verdict and judgment of guilty if such verdict and judgment were found or made and rendered against said defendant on any of said counts.

2. No offense against the United States is charged in the indictment herein, or any of said counts, for the same reason, and upon the same grounds as set forth in the demurrer of said Samuel H. Robinson on file herein.

3. That no offense sought to be charged in the indictment herein, or any count thereof, has been proven.

4. The evidence adduced fails to prove a plan, or scheme, or artifice said to be set forth in said indictment and each count thereof.

5. The evidence fails to prove that said defendant Samuel H. Robinson at any time had any knowledge of any plan, or scheme, or artifice, as set forth in said indictment, or any count thereof, or that he ever entered into any such plan, scheme, or artifice as set forth in said indictment, or any count thereof, or that he ever knowingly aided, abetted or assisted in the furtherance or execution of any such plan, scheme or artifice. [303]

That the statements, representations and letters

that were made or mailed by said Samuel H. Robinson were not made or mailed knowingly pursuant to any general plan or scheme adopted or sanctioned by him.

That any acts, declarations, or statements made by said Samuel H. Robinson, or any letter alleged to have been mailed or received by said Samuel H. Robinson had no relation to and was not a step in any attempted execution or furtherance of any plan, or scheme, or artifice as alleged in said indictment, or any count thereof, or in furtherance or execution of any plan, scheme, or artifice.

Lastly, that the evidence in this case, so far as said Samuel H. Robinson is concerned, is as consistent with his innocence as it is with his guilt.

I respectfully submit the matter without argument.

Mr. HARRIS.—May it please the Court, without repeating each one of the motions made by the defendant Robinson, the defendant Randolph reiterates and adopts them as if fully stated at this time. However, at this time I would like to make a short argument upon the proposition.

(After argument).

Mr. McDONALD.—The defendant Kassmir joins in the motions made by the defendant Randolph, and makes the further motion that the counts of the indictment referring to the testimony of the witness Pike, or the witness Christensen, to all transactions concerning Mr. Robinson, be dismissed on the ground that all of the testimony that these counts refer to are privileged communications between at-

torney and client. Your Honor has already passed upon that motion, but this is merely renewing it for the purpose of the record; we ask that that evidence be at this time stricken out.

The COURT.—Are you offering anything else besides that motion? [304]

Mr. McDONALD.—I am joining in the motion of the defendant Randolph.

The COURT.—I presume in behalf of your own client.

Mr. McDONALD.—Yes.

The COURT.—There being nothing further, the jury may be returned.

(The jury was returned into court.)

The COURT.—The jurors being present in the jury-box, and the defendants being present, you may proceed. I believe at this time the only motion that is before the Court is that of Goodwin, for an instructed verdict. The same will be denied. Any further motions?

Mr. McGEE.—Exception.

Mr. McMILLAN.—May it please your Honor, I made a motion on behalf of the defendant Robinson, and for the reasons therein stated I move for a directed verdict upon all of the grounds stated, and each of the grounds stated in the motion.

The COURT.—The point is, you made it in the absence of the jury; you made such a statement and you wish to request an instructed verdict at this time before the jury?

Mr. McMILLAN.—Yes.

The COURT.—On the grounds that you have stated to the Court?

Mr. McMILLAN.—Yes.

The COURT.—The same will be denied.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—The defendant Randolph makes a motion for an instructed verdict on the grounds stated to your Honor in the absence of the jury.

The COURT.—The same will be denied.

Mr. HARRIS.—Exception. At the same time we move to strike out all of the testimony in letters purporting on their face or [305] by the testimony of the witness to have been mailed after September 15, 1925, on behalf of the defendant J. W. Randolph, on the ground that as to him they are hearsay, and the mere relation of a conspirator, after the conspiracy or scheme has been consummated.

The COURT.—The motion will be denied.

Mr. McMILLAN.—The defendant Robinson joins in the motion just made by the defendant Randolph substituting the name Robinson for Randolph.

The COURT.—The same ruling.

Mr. McMILLAN.—Exception.

EXCEPTION No. 117.

That the Court erred in refusing to receive in evidence certain testimony on behalf of the defendant Randolph, which more fully appears as follows:

Mr. SWEENEY.—Objected to as immaterial, irrelevant, and incompetent.

The COURT.—The objection is sustained.

Mr. HARRIS.—Q. How long did you continue to work for Cromwell Simon & Co.?

Mr. SWEENEY.—Objected to as immaterial, irrelevant, and incompetent, and not within the issues of the indictment; it is certainly not relevant how long he worked for them.

Mr. HARRIS.—I think it is very relevant to show under what conditions Cromwell Simon & Co. were conducted, because that is the gist of the Government's case.

The COURT.—I will sustain the objection.

Mr. HARRIS.—Exception.

EXCEPTION No. 118.

The Court erred in refusing to receive in evidence [306] certain testimony on behalf of the defendant Randolph, which more fully appears as follows:

Mr. HARRIS.—Q. State whether or not Jack Randolph rendered you any assistance in getting the money?

Mr. SWEENEY.—Objected to on the ground it is immaterial, irrelevant, and incompetent, and particularly that it is leading.

Mr. HARRIS.—It goes to the good faith of this defendant as to whether he was in any alleged scheme.

The COURT.—I will sustain the objection.

Mr. HARRIS.—Exception.

EXCEPTION No. 119.

The Court erred in refusing to receive in evidence certain testimony on behalf of the defendant Randolph, which more fully appears as follows:

Mr. HARRIS.—Q. Mr. Paddock, is it not a fact that the terms of sale include delivery of the stock?

Mr. SWEENEY.—Objected to as immaterial, irrelevant, and incompetent, and calling for the conclusion of the witness, also leading.

Mr. HARRIS.—It is based on counsel's own question a moment ago.

The COURT.—It is not the best evidence, and I will sustain the objection.

Mr. HARRIS.—I desire to note an exception.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 120.

That the Court erred in refusing the motion of the defendants to strike from the record Exhibit No. "SS.," dated March [307] 8th, 1927, being a letter written to Mr. Allen, the grounds of which motion more fully appear as follows:

Q. Calling your attention to a letter which you wrote to Mr. Allen across the bay, and which you are probably familiar with, Exhibit No. "SS.," dated March 8, 1927—paragraph 3—I will read it to you and ask you if you are familiar with that paragraph—the paragraph is as follows:

"Mrs. Beans and Miss Durham had entered into a contract with the firm of Cromwell Simon & Company for the purchase of different stocks

(I do not remember the dates, but will give them all to you later). Because of reputation that Mr. Simon had, unbeknown to me or to my associates there, the Corporation Department called Cromwell Simon & Company before them for a hearing and revoked their permit.”

You say that is true? A. No.

Mr. HARRIS.—If your Honor please, this is a letter long after the alleged scheme had ended, and I move the Court that it be stricken out and the jury be instructed to disregard it, as far as my defendant is concerned.

The COURT.—What is the date of the letter?

Mr. SWEENEY.—It is dated March 8, 1927.

Mr. McGEE.—The same objection and motion on behalf of the defendant Goodwin.

The COURT.—The objection will be overruled.

Mr. HARRIS.—Exception.

Mr. McGEE.—Exception.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 121.

The Court erred in admitting in evidence certain testimony over the objections of defendants, as more fully appears as follows: [308]

Q. The certificates were dated August 7—from the letter of Mr. Robinson, which is dated August 26, that was the day upon which that order was given to Mr. Pike, was it not? You are familiar with that letter of August 26, are you not?

A. Yes.

Q. Who gave the order at that time?

A. I believe Mr. Simon.

Q. What became of the check of \$3,800 that was paid by Mrs. Beans to Cromwell Simon & Co., or Cromwell & Co., if you know?

Mr. HARRIS.—That is objected to as calling for a conclusion; the check is in evidence and shows on the back thereof that it was deposited on the day following, in the Humboldt Bank.

Mr. McGEE.—I object to it on behalf of Goodwin as immaterial, irrelevant, and incompetent, and hearsay.

The COURT.—The objection is overruled.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

To which ruling of the Court the defendant then and there duly and regularly excepted.

EXCEPTION No. 122.

That the Court erred in denying the motions of the defendants Robinson and Randolph for a directed verdict of not guilty upon all the accounts upon which they were on trial, which said motion more fully appears as follows:

Mr. McMILLAN.—May it please your Honor, at this time, at the conclusion of all of the evidence in the case on behalf of the defendant Robinson I move for a directed verdict upon all of the grounds, and for the same reasons set forth in my motion for a directed verdict at the conclusion of the Government's case in chief.

The COURT.—Does each defendant want to do that?

Mr. McGEE.—On behalf of the defendant Goodwin I move on all of the grounds I moved at the conclusion of the prosecution's [309] case, that your Honor instruct the jury to return a verdict of not guilty on all of the counts as far as the defendant Goodwin is concerned.

The COURT.—You ask for a dismissal?

Mr. McMILLAN.—I ask for a directed verdict.

Mr. McGEE.—I ask for a directed verdict upon exactly the same grounds as I stated at the conclusion of the Government's case.

Mr. HARRIS.—The defendant Randolph adopts that motion, inserting the name Randolph instead of Robinson.

Mr. McDONALD.—The defendant Kassmir now renews all the motions made at the close of the Government's case.

The COURT.—I would rather rule on the motions Tuesday.

(With the usual admonition to the jury, an adjournment was taken until Tuesday, June 19, 1928, at ten o'clock A. M.)

Tuesday, June 19, 1928.

The COURT.—The motions of the defendants Kassmir, Robinson, and Randolph for an instructed verdict will be denied. The motion of defendant Goodwin for an instructed verdict will be granted.

Mr. McMILLAN.—May I note an exception on behalf of the defendant Robinson?

Mr. McDONALD.—An exception on behalf of the defendant Kassmir.

Mr. HARRIS.—An exception on behalf of the defendant Randolph, your Honor.

To which ruling of the Court the defendants and each of them, then and there duly and regularly excepted.

EXCEPTION No. 123.

That the Court erred in instructing the jury, wherein the Court charged the jury that an agent who tried to sell stock [310] acted in the capacity of a trustee, which instruction was as follows:

“Agents who buy and sell stock stand in the attitude of trustees obligated to good faith and honest dealings with those with whom they do business, and the law obligates such a trustee, when in that position, to the highest degree of good faith and honesty, with his associates. He must not conceal anything from them; he must not falsify anything to them. His duty is to take care of their interests; to advise them correctly; to keep correct accounts, and, above all, to keep accurate books, and be prepared to account for every dollar when the time comes. He is in the same position as a director of a corporation who is a trustee of the corporation.”

To which instruction the defendants excepted as appears as follows:

Mr. HARRIS.—Now, if your Honor please, with the Court's permission, I would like to enter an exception to the Court's instruction—I had no way of having it by number, but the one which sets forth

that an agent who tried to sell stock acted in the capacity of a trustee; that, in effect, was the instruction. I would also like to except generally to the refusal of the Court to give any and all other instructions offered by the joint defendants, and refused to have been given.

The COURT.—I do not know whether a blanket objection like that would be of any value. Of course, the Court, in its instructions, endeavored to cover the entire field completely by giving every instruction which was pertinent to the issue. However, the exception can be noted by the reporter to the extent that counsel has expressed it.

To which ruling of the Court the defendant then and there duly and regularly excepted. [311]

EXCEPTION No. 124.

The Court erred in failing to give the following instruction which was requested by the defendants:

INSTRUCTION No. 16.

You are instructed that before one can be convicted of a crime by reason of the acts of another person who acts in his behalf, a clear case must be shown. The civil doctrine that a person is bound by the acts of his agent within the scope of the agent's authority has no application to criminal law. If a person is liable at all criminally for the acts of another, such liability must be founded upon authorized acts. Authority to do a criminal act will not be presumed.

You are instructed that the charges contained in the indictment are based upon alleged violations of Sec. 215 of the Criminal Code, without the element of conspiracy. You are therefore, instructed that before you can find the defendant J. W. Randolph guilty of any of said charges you must find first that the false pretense in the indictment were made directly by defendant Randolph, or that they were directly authorized or consented to by the defendant Randolph, and in the latter event a clear case must be shown.

People vs. Green, 22 Cal. App. 45, 50.

People vs. Doble, 75 Cal. Dec. 369.

INSTRUCTION No. 17.

You are instructed that before one can be convicted of a crime by reason of the acts of another person who acts in his behalf, a clear case must be shown. The civil doctrine that a person is bound by the acts of his agent within the scope of the agent's authority has no application to criminal law. If a person is liable at all criminally for the acts of another, such liability must be founded upon authorized acts. Authority to do a criminal act will not be presumed. [312]

You are instructed that the charges contained in the indictment are based upon alleged violations of Section 215 of the Criminal Code, without the element of conspiracy. You are, therefore, instructed that before you can find the defendant Robinson guilty of any of said charges you must find first that

the false pretenses alleged in the indictment were made directly by defendant Robinson, or that they were directly authorized or consented to by the defendant Robinson, and in the latter event a clear case must be shown.

People vs. Doble, 75 Cal. Dec. 369.

People vs. Green, 22 Cal. App. 45, 50.

The defendants, and each of them, regularly and duly excepted to the refusal of the Court to instruct the jury as requested with proposed instructions No. 16 and No. 17, as more fully appears as follows:

Mr. McMILLAN.—May it please your Honor, I have not any exception to the charge your Honor has given to the jury. There was one instruction which I requested on behalf of the defendant Robinson which the Court has refused to give. I desire to note an exception to your Honor's refusal to give that instruction.

The COURT.—Just a moment. You asked for one instruction, Instruction No. 19.

Mr. McMILLAN.—No, that the Court has given already. To identify the instruction, it is No. 17.

The COURT.—Do you mean one of those by the joint defendants?

Mr. McMILLAN.—Yes.

The COURT.—You wish to take exception to the refusal of the Court to give Instruction No. 17 as presented by the joint defendants?

Mr. McMILLAN.—Yes.

The COURT.—Let the record show that you take your exception. [313]

Mr. HARRIS.—I would like to amplify it to this extent, particularly to the failure of the Court to give the instruction with reference to the fact that a clear case must be shown where one is to be found guilty of a crime alleged to have been committed by another.

The COURT.—The same instruction to which Mr. McMillan took an exception?

Mr. HARRIS.—Yes.

To which ruling of the Court the defendants, and each of them, then and there duly and regularly excepted.

EXCEPTION No. 125.

That the Court erred in denying the motion of the defendants for a new trial, to which ruling of the Court the defendants then and there duly and regularly excepted.

EXCEPTION No. 126.

That the Court erred in denying the motions of the defendants in arrest of judgment to the denial of which motions the defendants then and there duly and regularly excepted.

WHEREFORE, for the many manifest errors committed by the Court, the defendants through their attorneys pray that said sentences the judgments of conviction be reversed; and for such other

and further relief as to the Court may seem meet and proper.

R. B. McMILLAN,
Attorney for Defendant Robinson.

JAMES B. O'CONNOR,
HAROLD C. FAULKNER,
H. H. HARRIS,

Attorneys for Defendant Randolph. [314]

[Endorsed]: Due service and receipt of a copy of the within assignment of errors is hereby admitted this 29th day of June, 1928.

GEO. J. HATFIELD,
Per J. L. SWEENEY,
Attorneys for United States.

Filed Jun. 29, 1928. [315]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL, SUPERSEDEAS AND BONDS.

Upon motion of the attorneys of the above-named defendants Samuel H. Robinson and J. W. Randolph, and it satisfactorily appearing that said defendants have this day duly filed their, and each of their, notice of appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit from the judgments, and each of said judgments, made and entered in the above-entitled cause against them, and each of them, on June 20, 1928, and said defendants, and each of them, have filed their peti-

tion for an appeal, together with their assignment of errors and proposed bill of exceptions,—

IT IS ORDERED, that an appeal be, and the same is hereby allowed to have reviewed in said United States Circuit Court of Appeals in and for the Ninth Circuit the judgments and sentences heretofore entered in the above-entitled action against said defendants Samuel H. Robinson and J. W. Randolph, [316] and each of them, and that the Clerk of this Court transmit to the Clerk of the United States Circuit Court of Appeals in and for the Ninth Circuit, a full, true and correct transcript of all records and proceedings in the above-entitled cause.

AND IT IS ORDERED, that the amount of the cost bond on said appeal herein be and hereby is fixed in the sum of Two Hundred and Fifty Dollars (\$250), conditioned as required by law and rules of this Court.

AND IT IS ORDERED, that upon the giving by said defendant Samuel H. Robinson of a good and sufficient bond or undertaking in the sum of \$10,000.00 and conditioned as required by law and the rules of this court, all further proceedings in this court be suspended and stayed as against said defendant Samuel H. Robinson until the final determination of said appeal by the said United States Circuit Court of Appeals, or by the Supreme Court of the United States upon a petition for writ of certiorari.

AND IT IS ORDERED, that upon the giving by said defendant J. W. Randolph of a good and

sufficient bond or undertaking in the sum of \$10,000.00 and conditioned as required by law and the rules of this court, all further proceedings in this court be suspended and stayed as against said defendant J. W. Randolph until the final determination of said appeal by the said United States Circuit Court of Appeals, or by the Supreme Court of the United States upon a petition for writ of certiorari.

AND IT IS FURTHER ORDERED, that the assignment of errors and proposed bill of exceptions filed herein and presented herewith jointly and severally on behalf of said defendants Samuel H. Robinson and J. W. Randolph be and the same is made [317] the assignment of errors and proposed bill of exceptions on behalf of said defendants, and each of them.

Dated, June 29, 1928.

HAROLD LOUDERBACK,
U. S. District Judge.

Due service of the within order and receipt of a copy thereof hereby admitted this 29 day of June 1928.

GEO. J. HATFIELD,
J. L. SWEENEY,
Attorneys for U. S.

[Endorsed]: Filed Jun. 29, 1928. [318]

[Title of Court and Cause.]

BILL OF EXCEPTIONS ON BEHALF OF THE
ABOVE-NAMED DEFENDANTS SAMUEL
H. ROBINSON AND J. W. RANDOLPH,
STIPULATION BETWEEN PARTIES
THAT SAME BE SETTLED AND AL-
LOWED AS THE TRUE BILL OF EXCEP-
TIONS HEREIN, AND ORDER OF COURT
SETTLING AND ALLOWING.

BE IT REMEMBERED, that heretofore, to wit, on February 21, 1928, the Grand Jury of the United States, in and for the Northern District of California, Southern Division, First Division, did present and return into and before the above-entitled Court its indictment against the above-named defendants; that on said day said indictment was filed in said court, and thereafter each of said defendants was duly arraigned, as shown by the record on file in the above-entitled cause.

AND BE IT FURTHER REMEMBERED, that thereafter, to wit, on March 26, 1928, the above-named defendants, Samuel H. Robinson and J. W. Randolph, each duly filed his demurrer to said indictment, as shown by the records of said court, and made a part hereof. [319]

EXCEPTION No. 1.

That on March 29, 1928, said Court sustained each of said demurrers as to Count One of said indictment, and overruled each of said demurrers as to all remaining counts.

That said demurrers, after stating the title of the court cause, were and are as follows:

I.

That said indictment does not, nor any count thereof, state facts sufficient to constitute a public offense against the United States of America.

II.

That the indictment and each and every count thereof fails to advise the defendant herein sufficiently of the charge or charges that he is called upon to meet and does not contain averments sufficient to enable him to intelligently prepare for his trial and that in said behalf, each count thereof is ambiguous, unintelligible and insufficient in the following particulars:

1. That the paragraph beginning at line 12 and page 1 of said indictment herein, is unintelligible, ambiguous and meaningless and that the meaning intended to be conveyed thereby cannot be ascertained therefrom.

2. That with reference to the paragraph beginning on line 29 and page 1 of said indictment, it cannot be ascertained therefrom what part or connection, if any, the defendant, J. W. Randolph, had with said scheme or in what way he devised or intended by means of the allegations thereof to take part in said scheme to defraud.

3. That with further reference to said last mentioned paragraph in said indictment, it cannot be ascertained [320] therefrom whether the acts specified therein were actually performed.

4. That the paragraph beginning with line 21 of page 2 of said indictment is uncertain and ambiguous in that it cannot be ascertained therefrom,—(a) What relation, if any Cromwell & Company, Inc., had to the alleged scheme or device. (b) Whether the said Samuel H. Robinson did in fact mail said Articles of Incorporation to LeRoy F. Pike at Reno, Nevada. (c) Whether said Robinson did request said Pike to obtain dummy directors. (d) In what manner said acts were unlawful or in violation of the Statutes of the United States or any state or territory thereof. (e) What relation, if any, the said acts had to said alleged scheme or artifice to defraud.

5. With relation to paragraphs beginning on line 3 and ending on line 12 of page 3 of said indictment, it does not appear and cannot be ascertained therefrom,—(a) Whether it was part of the scheme or artifice to defraud that defendant, Kassmir, should offer to subscribe or should pay the sum of Fifty Thousand (\$50,000.00) Dollars cash for said stock, or whether he should pay the said Fifty Thousand (\$50,000.00) Dollars. (b) That the falsifying or negating paragraph thereof does not allege that the said Kassmir did not offer to subscribe. (c) That said negating paragraph states, “as defendant then and there well knew,” but does not state which defendant then and there well knew that Kassmir did not pay Fifty Thousand (\$50,000.00) Dollars each. (d) That it cannot be ascertained therefrom who seconded, offered and/or passed said resolution, that is to say whether

it was Cromwell Simon and Company, Cromwell and Company or some other board, body or organization, or what relation said resolution had to said scheme or artifice. (e) That generally it cannot be ascertained in what manner said [321] acts were a part of or in furtherance of said scheme or artifice to defraud.

6. With relation to paragraph beginning on line 13 and ending on line 27 of page 3 of said indictment, it cannot be ascertained therefrom, nor from any part of said indictment,—(a) What is meant or intended to be meant by “Cromwell Simon and Co. Investment Plan,”—(b) What false and fraudulent representations or promises were made or intended to be made.

That the statements made therein are recitals of conclusions of law only and not allegations of fact.

7. With relation to paragraph beginning on line 5 of page 4, it cannot be ascertained therefrom nor from any part of said indictment, what false representations were to be used to induce and/or persuade the victims to purchase high-grade stock under the alleged Cromwell & Simon Co. Investment Plan,—(a) What the Cromwell & Simon Co. Investment Plan was.

8. With relation to paragraph beginning on line 14 and ending on line 22 of page 4 of said indictment, it cannot be ascertained therefrom nor from any part of said indictment,—(a) What time is referred to by the words “existing conditions,” (b) What is meant by the language, “alluring, exaggerated, misleading, false and fraudulent rep-

representations," that is to say what the alluring, exaggerated, misleading, false and fraudulent representations related to. (c) What the language, "should raise in said victims hopes and expectations of profit and reward far beyond the limits warranted by existing conditions" relates to, or what connections same had, if any, with said artifice or scheme to defraud.

9. With relation to paragraphs beginning with line 24 and ending with line 31 of page 4, it cannot be ascertained therefrom nor from any part of the said indictment,—(a) In what [322] respect it is alleged that Cromwell Simon & Co. was a reputable company, that is to say, reputed for what. (b) That the negating and falsifying clause does not deny or allege that Cromwell Simon & Co was a reputable brokerage company. (c) That it cannot be ascertained what is meant by "of the character of a bucket shop." (d) That the allegations in said paragraph as to representations were only representations of opinion and "puffing" permitted by law.

10. With reference to the paragraph beginning on line 1 and ending on line 7 of page 5 of said indictment, it cannot be ascertained whether in truth or in fact it was or was not the business of Cromwell Simon & Co. to sell to alleged victims high grade corporation stocks and other securities, particularly on the partial payment plan.

11. With relation to paragraph 3 on page 5 of said indictment, it cannot be ascertained therefrom nor from any part of said indictment what is meant

by,—(a) Cromwell Simon & Co. Investment Plan.

12. With relation to paragraph 4 on page 5 of said indictment, it cannot be ascertained therefrom nor from any part of said indictment when or in what manner the alleged victims would draw any dividends or interest declared on high-grade stock or other securities so purchased and held by them, that is to say, said victims, or in what manner, if at all this defendant would or could become possessed of said dividends or interest, or any of said defendants or in what manner said Cromwell Simon & Co. could or would become possessed of said dividends or interest thereon.

13. With relation to paragraph 5 appearing on page 6 of said indictment, it cannot be ascertained therefrom nor from any part of said indictment what relation the following words, to wit: [323] “that an investor subscribing for such corporate stock, or other security, through the said company, would have the privilege of selling the same at any time he desired,” would have as to the alleged scheme or artifice to defraud in this that it is not negatived or falsified that said investors referred to in said indictment had such privilege.

14. That Count 1 of said indictment does not state facts sufficient to constitute an offense against the United States of America; that said count does not allege that the letter set forth in said count was ever placed or cause to be placed in the United States mail.

15. That with respect to the letters referred to in each and all of the counts of said indictment,

only the following are purported to be signed by or referred to the said defendant, J. W. Randolph: The letter referred to in Count Three and marked Exhibit "F," the letter referred to in Count Eleven and marked Exhibit "P," the letter referred to in Count Nineteen and marked Exhibit "EE," the letter referred to in Count Twenty-two and marked Exhibit "HH," the letter referred to in Count twenty-three and marked Exhibit "II," the letter referred to in Count twenty-four and marked Exhibit "KK," the letter referred to in Count Twenty-five and marked Exhibit "LL," the letter referred to in Count Twenty-seven and marked Exhibit "MM" and the letter referred to in Count Thirty and marked Exhibit "PP," and it does not appear in the said indictment or any of the counts thereof what connection, if any, said J. W. Randolph had with the mailing of each and all of the exhibits referred to in this indictment and all of the various counts thereof.

EXCEPTION No. 2.

AND BE IT FURTHER REMEMBERED, that said defendants, Samuel H. Robinson and J. W. Randolph each duly and seasonably [324] filed demands for bill of particulars, as shown by the records of said court, made a part hereof, a copy thereof being as follows:

Now come J. W. Randolph and Samuel H. Robinson, by their attorney, H. H. Harris, and move the above-entitled court for an order directing the United States District Attorney for the Northern

District of California, Southern Division, to furnish to said defendants a bill of particulars in order that said defendants may know and be particularly informed of the following matters, to wit:

(1) The names of the persons referred to in said indictment as victims.

(2) What particular certain class of persons the defendants had devised a scheme and artifice to defraud?

(3) When or during what period prior to the mailing of the letters stated did defendants devise or intend to devise the scheme to defraud alleged in the indictment?

(4) The names and addresses of the persons to whom and the times and places when the defendants Cromwell Simon and Harry M. Kassmir as copartners or otherwise offered for sale or negotiated for the sale of or otherwise dealt in securities in the State of California.

(5) Whether or not the defendant, Robinson, ever requested said Pike to obtain dummy directors and regularly incorporate Cromwell & Company, Inc., under the laws of the State of Nevada and if so when the said Pike did said things, and the names and addresses of said dummy directors.

(6) Whether or not Samuel H. Robinson, Harry M. Kassmir and Cromwell Simon ever visited Reno, Nevada, for the purpose of obtaining a meeting of the directors of Cromwell & Company, Inc., and if so the time when said visits occurred and the time when said meeting of said directors occurred.

(6a) What relation, if any, the formation and/

or existence [325] of Cromwell & Company, Inc., had or could have had to the alleged scheme or device.

(7) Whether or not the defendant, Kassmir, ever offered to subscribe \$50,000.00 of said company's stock and pay cash for it and if so the time and place when said offer was made.

(8) Who put the offer of Harry M. Kassmir to subscribe \$50,000.00 worth of stock in the form of a resolution and who seconded said resolution and who were the persons who voted and passed the same unanimously.

(9) Whether or not the offer of Harry Kassmir to subscribe \$50,000.00 worth of said company's stock was ever accepted by said company and if so the time and place when said acceptance occurred.

(10) What were the terms and conditions of the so-called Simon & Company investment plan.

(11) Whether or not the defendants J. W. Randolph or Samuel H. Robinson ever solicited or procured from the so-called victims subscriptions or orders for shares of corporate stock or other securities and if so the names and addresses of said alleged victims and the time and place of said soliciting or procuring said subscriptions.

(12) What false or fraudulent representations or promises as to the financial standing of the Cromwell Simon & Company or of the defendant, Cromwell Simon, or Harry M. Kassmir were ever made by the defendants J. W. Randolph or Samuel H. Robinson.

(13) To what persons and at what time or place

were any false or fraudulent representations or promises as to the financial standing of the Cromwell Simon & Company and of the defendants Cromwell Simon or Harry M. Kassmir were ever made by the defendants J. W. Randolph or Samuel H. Robinson.

(14) What false or fraudulent representations or promises [326] as to the care or watchfulness exercised for the benefit of said alleged victims by the said defendants over investments made with them were ever made by any of the defendants, particularly the defendants J. W. Randolph and Samuel H. Robinson.

(15) The time and place of making, the names of the defendants who made and the names of the persons to whom the defendants, J. W. Randolph or Samuel H. Robinson, made any false or fraudulent representations or promises as in the last paragraph above set forth.

(16) What false or fraudulent representations or promises as to the alleged safety of purchasing stocks or other securities through the defendants and the said Cromwell Simon Company were ever made by the defendants, J. W. Randolph or Samuel H. Robinson.

(17) The time of making and the persons to whom the defendants, J. W. Randolph or Samuel H. Robinson, made any false or fraudulent representations or promises as in the last next preceding paragraph set forth.

(18) Whether or not either of said defendants, J. W. Randolph or Samuel H. Robinson, required

any alleged victims to deliver over to defendants valuable securities as alleged collateral to secure deferred payments on stock subscribed for and if so the names of said victims, together with a description of any securities delivered to defendants by them and the time and place of said delivery.

(19) Whether or not said defendants J. W. Randolph or Samuel H. Robinson ever took or embezzled or converted any collateral securities to their own use or benefit and if so a description of said securities, the names of the persons from whom taken or procured, the names of the defendants who so took said securities, the names of the defendants who embezzled or converted said securities, together with the time and place of such taking, [327] embezzlement and conversion.

(20) What were the false representations which the defendants or any of them did not then or there or ever intend to carry out or perform, particularly with reference to the defendants J. W. Randolph or Samuel H. Robinson.

(21) To whom were the false representations referred to in the last next preceding paragraph made or communicated by means of letters or circulars or advertisements and what were the contents of said letters, circulars and advertisements.

(22) The names of the persons to whom false representations which the defendants did not then or there or ever intend to carry out or perform were made and the time and place of said making, together with the names of the defendants making

them or the names of agents who made them on behalf of said defendants.

(23) Whether or not the defendants J. W. Randolph or Samuel H. Robinson or either of them ever made any of the alleged alluring, exaggerated, misleading, false or fraudulent representations, pretenses or promises as set forth in sub-paragraphs 1, 2, 3, 4 and 5 of each and every count of said indictment and if so made, the names of the defendants making them, the names of the persons to whom made, the places where made and the time of the making thereof.

(24) What were or are sufficient financial resources necessary to carry on a reliable brokerage business?

(25) What was or is the financial resources of any of the defendants named in said indictment or of Cromwell Simon & Company?

(26) What is a responsible brokerage house and what is necessary to constitute the same?

(27) Whether or not the alleged representation that persons could rely upon the standing or financial standing or [328] Cromwell Simon & Company was or was not true.

(28) Whether or not the representations that the business of Cromwell Simon & Company was to sell to the alleged victims high-grade corporate stock and other securities on the partial payment plan or otherwise was or was not true.

(29) Whether or not the defendants or any of them or Cromwell Simon & Company, and particularly the defendants J. W. Randolph and Samuel

H. Robinson received any orders from any person or persons for the purchase from them of any corporate stock or securities and if so the names of the persons placing said orders or offers together with the time and place thereof and a description of the stock or securities embraced in said orders.

(30) Whether or not the alleged false representation that the defendants would obtain subscriptions from the alleged victims for stocks and other securities on the Cromwell Simon & Company investment plan and would immediately purchase the same at a market price for and on account of the said alleged victim and that Cromwell Simon & Company would hold the same so that the alleged victims could be certain that the stocks and other securities would be on hand for them when called for by them was or was not true.

(31) Whether or not Cromwell Simon & Company ever received any orders which required them to immediately purchase stock or other securities at the market price or otherwise for the account of said alleged victims and if so the persons who placed said orders, the time and place thereof and the contents of said orders.

(32) Whether or not any dividends or interest were ever declared or payable on any high-grade stock or other securities purchased and held by defendants or Cromwell Simon & Company for any persons at all and if so when said dividends were declared or [329] said interest was payable and on what stocks or securities and to what persons

the defendants or Cromwell Simon & Company should have paid the same.

(33) What were or are the qualifications necessary on the part of Cromwell Simon & Company to qualify it to advise victims to buy or sell corporate stocks or other securities and in what portion of such qualification was said company deficient?

(34) What are the facts which resulted in said victims not being able to *realize* upon the defendants or any of them for safe or other information or advice in the matter of buying or selling stocks or securities?

(35) What amounts of money or property did defendants J. W. Randolph or Samuel H. Robinson ever appropriate or embezzle to their own use or benefit?

(36) From whom did defendants J. W. Randolph or Samuel H. Robinson ever procure any money or property which they appropriated or embezzled to their own use and benefit.

(37) The times and places where the defendants J. W. Randolph or Samuel H. Robinson or either of them ever appropriated or embezzled to their own use or benefit any money or property.

(38) How or in what manner Exhibits "A" to "BBB" either individually or collectively could have been or were in furtherance of any alleged scheme or artifice to defraud, particularly with relation to the defendants J. W. Randolph or Samuel H. Robinson.

(39) How or in what manner any letters written by or pertaining to the business of the Charles

Wesley Company of Los Angeles, California, have been or were in furtherance of any scheme to defraud set forth in any of the counts of said indictment, and particularly the letters alleged to be mailed or caused to be mailed by the defendants J. W. Randolph or Samuel H. Robinson or either or them. [330]

(40) How or in what manner any letters written by or pertaining to the business of Thomas Allen Company of Seattle, Washington, could have been or were in furtherance of any scheme or artifice to defraud set forth in said indictment?

(41) That said aforementioned matter relates to general allegations contained in the indictment on file herein and that more particular and specific knowledge of such matters is necessary to said defendants on their trial and that without such particular knowledge said defendants will be unable to properly prepare their defense to said indictment or to prepare any defense at all.

This motion is made upon the indictment on file herein, upon the matters set forth in this motion and on the affidavits of defendants J. W. Randolph and Samuel H. Robinson filed herewith and attached hereto.

Respectfully submitted,

H. H. HARRIS,

Attorney for Defendants J. W. Randolph and
Samuel H. Robinson.

[Title of Court and Cause.]

AFFIDAVITS OF J. W. RANDOLPH AND
SAMUEL H. ROBINSON.

State of California,
County of Los Angeles,—ss.

J. W. Randolph and Samuel H. Robinson, being first duly sworn, each for himself, deposes and says

That he is one of the defendants in the above-entitled action; that the trial of the above-entitled action has been set for the 29th day of May, 1928; that he is in possession of a copy of the indictment on file in the above-entitled action and that he has read the same; that said indictment purports to charge him with thirty-seven violations of section 215 of the Criminal [331] Code of the United States; that said indictment contains and is almost entirely composed of allegations of acts alleged to have been committed by the defendants; that these acts are alleged in general terms and the indictment fails to allege the time, place or circumstances necessary to identification of any of the acts so alleged or necessary fully to advise affiant of the particular circumstances of said act; that he has been informed by his attorney, H. H. Harris, and upon such information believes and alleges that unless he is furnished with a bill of particulars which bill of particulars shall particularly and specifically inform him of the exact time when said acts were committed, *what* particular place where said acts were committed and of the particular

circumstances surrounding and comprising the commission of these acts, that he will be unable to properly prepare his defense to said indictment or to prepare any defense at all.

(Duly signed and sworn to before notary public.)

Said demands for bill of particulars came on regularly to be heard, were heard, and were ordered denied by the Court, to which order denying said demands for bill of particulars said defendants each duly entered his exception.

EXCEPTION No. 3.

AND BE IT FURTHER REMEMBERED, that the above-named defendant, Samuel H. Robinson duly and seasonably and before the trial of the above-entitled cause, filed his petition for severance, as shown by the records of said court, made a part hereof.

That a copy of said petition, together with the affidavit of said Robinson in support thereof, is as follows:

[Title of Court and Cause.]

Now comes the defendant, Samuel H. Robinson, by his attorney, H. H. Harris, and respectfully prays the above-entitled court that he be tried separate and apart from the other defendants [332] and that there be a severance as between him, as a defendant, and the other defendants, in the said entitled court and for ground of severance alleges as follows:

I.

That there is certain evidence necessary and material in his defense, which as to certain of the other defendants, particularly Harry M. Kassmir and Cromwell Simon, would be inadmissible by reason of their privileged nature.

II.

That there is certain evidence material and necessary in his defense that would be inadmissible against any of the other defendants, particularly Harry M. Kassmir and Cromwell Simon, by reason of the fact that the introduction of those said facts on his behalf would be inadmissible over the objection of the other defendants on the ground that they would thereby be compelled to testify against themselves without their consent.

III.

That the defense of Samuel H. Robinson is antagonistic to the defense of the other defendants in said cause.

IV.

That the defense of Samuel H. Robinson would implicate certain of the other defendants, particularly Harry M. Kassmir and Cromwell Simon.

V.

That the defense of Samuel H. Robinson cannot be presented fairly and properly in a joint trial with the other defendants and that the introduction of certain evidence pertaining to other defendants

that would be as to him incompetent and immaterial, would seriously prejudice him.

H. H. HARRIS,
Attorney for Petitioner. [333]

[Title of Court and Cause.]

State of California,
County of Los Angeles,—ss.

Samuel H. Robinson, being first duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action. That the date of the trial of the above-entitled cause has been set for May 29, 1928. That there are four other defendants; that unless this Court grants the petition of this affiant to have his trial severed from the trial of the other four defendants, he will be tried on said date, jointly with the other four defendants.

Your affiant is an attorney at law, duly licensed and admitted to practice in all of the courts of the State of California, and has been such for more than seven years last past. That he is charged jointly with four other defendants in thirty-eight counts in this indictment of having used the mails to defraud. Affiant states that his only relation with the other defendants was that of attorney and client; that of the thirty-eight letters upon which the thirty-eight counts of the indictment are predicated, only five have been mailed or caused to be mailed by him. That these letters were sent out by him in the regular course of business and as part

of his professional employment as attorney for certain of the other defendants; that he never had any acquaintance with the other defendants, nor had any part in the scheme set out in the indictment, prior to June, 1925; that said indictment contains various letters alleged to have been sent out prior to that date. That for the purpose of his defense, it will be necessary for him to introduce a number of letters and documents passing between the defendants, Harry M. Kassmir, Cromwell Simon and your affiant. That in addition to these letters, [334] there were numerous oral communications and that said letters, documents and oral communications were occasioned solely by the relations between the said defendants, Harry M. Kassmir, Cromwell Simon and your affiant, by reason of the relation of attorney and clients; that these communications are therefore privileged and therefore inadmissible and that an objection to their introduction will be made by at least one of the defendants jointly charged with affiant. That these letters, documents and communications are absolutely necessary in the defense of your affiant; that his inability to introduce them would result as to him in a serious miscarriage of justice and a prejudice of his rights.

That in order to introduce evidence necessary in his own defense, affiant expects and intends to take the stand on his own behalf and his evidence will implicate certain of the other defendants and his defense is antagonistic to them.

WHEREFORE, your affiant prays an order of this Court severing his trial from the trial of the other defendants.

(Duly signed and sworn to by Samuel H. Robinson.)

That said petition for severance came on regularly to be heard, was heard, and was denied by the Court and said defendant Samuel H. Robinson duly noted an exception to the order of the Court denying his said petition for severance.

AND BE IT FURTHER REMEMBERED, that said defendants pleaded Not Guilty to said indictment on March 26, 1928, and the cause being at issue, the same came on regularly for trial before the Honorable Harold Louderback, United States District Judge, on May 29, 1928, and a jury was duly impaneled and sworn to try the cause, the United States being represented by George J. Hatfield, Esq., United States Attorney, Joseph L. Sweeney, Esq., Assistant United States Attorney, and William A. O'Brien, Esq., Assistant [335] United States Attorney, and the defendants hereinafter named, being personally present and represented by counsel as follows:

For defendant, Harry M. Kassmir, Fred McDonald, Esq.;

For defendant, Samuel H. Robinson, R. B. McMillan, Esq.;

For defendant, J. W. Randolph, H. H. Harris, Esq.; and

For defendant, Ortin E. Goodwin, John A. McGee, Esq.

Defendant Cromwell Simon not appearing, his bond was ordered forfeited.

After said jury was duly impaneled and sworn as aforesaid, an adjournment was thereupon duly taken until May 31, 1928, at 10:00 A. M.

Thursday, May 31, 1928.

Thereupon, Joseph L. Sweeney, Esq., Assistant United States Attorney, made an opening statement to the jury as to the matter the plaintiff expected to prove.

Thereafter the following proceedings were had:

Mr. McDONALD.—At this time, if your Honor please, in the interest of time of both your Honor and the jury, I would ask that any objection made by one defendant be considered as made by all the defendants, and an exception reserved by one defendant be considered as reserved by all of the defendants.

The COURT.—Except in those cases where objections are made on behalf of one defendant may not apply to the others, in which case you will have to specifically state the objection on behalf of that defendant. Where the objection would apply to all the defendants, I am willing to have that apply.

Thereupon the United States, to maintain the issues on its part to be maintained, called as its first witness, Mrs. Emily A. Beans.

TESTIMONY OF MRS. EMILY A. BEANS,
FOR THE UNITED STATES.

Mrs. EMILY A. BEANS, produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows: [336]

Direct Examination.

(By Mr. SWEENEY.)

I reside in Oakland, 608 Excelsior Boulevard, and during the year 1925 resided at 5838 Birch Court, which was my own house. I know the defendants J. W. Randolph, Harry Kassmir and Samuel H. Robinson. (Witness here identifies said three defendants in the courtroom.) I doubt if I would recognize Ortin E. Goodwin; I never met him, I think, but once. The defendant, Cromwell Simon, who is not here, I know; I met him two times. Met Mr. Randolph some time during the early part of the year 1925; yes, in March; he came to my house, I am not sure whether it was by appointment, or not, but he came to my house, and we talked along socially for a little bit, and then he finally broached the subject; he said that he would like to help me to make back some of the money that he had caused me to lose in the Nabisco Company, and he said, "Haven't you got some stock laying around here that is not paying any money only dividends," and I said, "Why, yes, I have got some stock, but I don't know whether I want to let it go or not," and he explained to me how he could take those

(Testimony of Mrs. Emily A. Beans.)

stocks and put them in Cromwell Simon and have them pay me good money; let them lay in Cromwell Simon's vault as collateral, and then they would buy me some stock, whatever I wanted, Hudson, or Studebaker, whatever I might see fit, and be earning a little money for me; prior to this visit, I had some business dealing with Mr. Randolph—I bought Georgia Fruit Company, and lost considerable money on that transaction.

“Mr. McGEE.—Of course, it is understood that that testimony is limited to the defendant Randolph, that it is hearsay as to the other defendants.

The COURT.—Unless it is connected up with the particular scheme alleged, of course it would have no bearing except on the identification of Randolph.”

EXCEPTION No. 4.

Mr. McMILLAN.—May it be understood that I object to that testimony upon the ground that so far as the defendant Robinson is concerned it is too remote, incompetent, and hearsay. [337]

The COURT.—Will you connect this up with this matter?

Mr. SWEENEY.—It is just a matter of identification of Mr. Randolph, and showing the entrée that Mr. Randolph had to this lady.

Mr. SWEENEY.—I will offer to connect it up, if I do not connect it up it will be ruled out.

The COURT.—Connect it up as a part of the case, or simply as identification?

(Testimony of Mrs. Emily A. Beans.)

MR. SWEENEY.—I will have to stand on my former statement, just as a matter of identification.

THE COURT.—It will be received for that purpose, and only for that limited purpose, and the objection will be overruled.

MR. McMILLAN.—May we respectfully note an exception?

THE COURT.—Yes.

WITNESS. — (Continuing.) During Mr. Randolph's first visit in March, 1925, I did not give him any stock; my stocks were at Berkeley in the safe deposit vault, but I agreed to get them out and he was to come over again and see the stock. I got the stock home, and Mr. Randolph came up by appointment; he came alone. This second visit was along in the latter part of March, 1925; I cannot fix the date, I have tried to forget the whole transaction. Only myself and Mr. Randolph present.

EXCEPTION No. 5.

Q. What was the conversation you had with Mr. Randolph at that time?

MR. McMILLAN.—So far as the defendant Robinson is concerned, that is objected to on the ground it is hearsay, and is *res inter alios acta*.

MR. SWEENEY.—It is all part of one scheme.

THE COURT.—The objection will be overruled.

MR. McMILLAN.—Note an exception. [338]

Well, he told me, he said that he could take that stock of mine, turn it into Cromwell Simon, and

(Testimony of Mrs. Emily A. Beans.)

they would hold it as collateral and buy me some Studebaker with it, and I said then it means that my stock will simply repose in Cromwell Simon's safe deposit vault, instead of mine, and he said, "Absolutely, yes." that was his exact words, "Absolutely yes." I did deliver the stock to Mr. Randolph and he gave me a receipt for it. I could not tell you the number of shares of stock I delivered to him, but I know the number of dollars that it amounted to was \$3,100.00. \$3,100 was the face value of it. (Here witness is shown a receipt for the stock and counsel for defendant Randolph stipulated that said receipt was given to the witness and was signed by Randolph.) He kept a copy of it. The receipt now shown me is in my name, and that is his name and the shares of stock. (Said receipt is here marked, Government's Exhibit No. 1 for Identification.)

When Mr. Randolph called on me the second time I do not remember signing any kind of a contract with him or any character of paper to act as agent. Mr. Randolph came to *see again* just a few days later. I just can't recall what called him over but he had not been in the house but a little while when my telephone rang and I went to the telephone. A. W. Scott was on the telephone. After that telephone conversation, I had a conversation with Mr. Randolph concerning the subject matter of the telephone call. The situation is this: I was informed by Mr. Scott about certain things and I told those things to Mr. Randolph. His only answer was,

(Testimony of Mrs. Emily A. Beans.)

“They all do it,” and I immediately put on my things and went over to Mr. Scott. I went over by myself.

Mr. HARRIS.—If your Honor please, so that I won't interrupt the witness, on behalf of the defendant Randolph I reserve any objections and motions to strike out.

The COURT.—I do not want to put it that way, because [339] you may be reserving objections that are not brought to the attention of the Court. If the same objection is made as before, I can make the same ruling and go ahead on the understanding, but simply to give you that blanket reservation without the Court knowing what the objection may be, I am not prepared to make any such ruling as that.

Mr. McMILLAN.—May I at this time note clearly what my objection is to this testimony?

The COURT.—I will say—I am not going to go back over the record as to what was understood. I said you must object each time. If a new question comes up and you wish to put in the record something that you feel that you have not already in the record, it will have to be put in the record, and will apply to the questions that are being propounded. I am not going to go back over the record.

Mr. McMILLAN.—My guidance, your Honor, was the rule that we entered into at the start, that one objection made by counsel, the other counsel

(Testimony of Mrs. Emily A. Beans.)

would have the benefit of that if it applied—is that still understood?

The COURT.—It will apply equally to all defendants, but if one defendant has a defense against another, which I do not know that he will have, but if he does have a defense as distinguished from another, then you have got to object for that defendant. In other words, suppose the question is not proper as against any defendant, and an objection made, that is good for every defendant. But suppose that the evidence would be good against one or two of the defendants, and not against the others, then the objection is only good for the person who makes the objection. That is the situation.

Mr. McMILLAN.—May I reserve a motion to strike out this testimony seasonably? [340]

The COURT.—I think as far as the motion to strike out is concerned, you may present that to the Court.

Mr. HARRIS.—That would inure to the benefit of all the defendants.

The COURT.—Yes, I can see no objection to that. If it is not connected up in the record, but stands unsupported, it will be stricken out, of course. Let us proceed.

The first time I saw Mr. Kassmir was the day I went over to see Mr. Scott, went from Mr. Scott's office there; they were waiting, just waiting to have the signatures put on, the names, and I did not know what to do, so I promised that I would go

(Testimony of Mrs. Emily A. Beans.)

to the Mills Building before I would do anything; so I went over to see Mr. Kassmir and he talked very nice to me, and persuaded me to leave that stand, that I would get my stock back, he would give me a receipt, I would get my stock back and still have it there earning money for me. When I went to the Mills Building. I went to Mr. Kassmir's private office, of the firm of Cromwell Simon Company and Cromwell Simon sat in the room for a while and I was introduced to Mr. Cromwell Simon at that time.

EXCEPTION No. 6.

Q. Now, can you tell us more definitely the conversation you had with Mr. Kassmir on that occasion?

Mr. HARRIS.—That is objected to on the ground there is no foundation laid yet; I only want all of the parties present.

Mr. SWEENEY.—Who was present at that time?

A. Just Cromwell Simon, and I do not think he was in the room all the while.

Q. Who else? A. Mr. Kassmir.

Mr. McMILLAN.—I ask leave at this time, so that my objection will appear clearly in the record—I make an objection [341] on behalf of the defendant Samuel Robinson, first that this testimony is too remote so far as that defendant is concerned, that it is *res inter alios acta*, that it is hear-

say, and, furthermore, they are seeking to bring in declarations and actions at a time that is remote to the charges contained in this indictment; this is not a conspiracy charge, but a charge under Section 215 of the Criminal Code, the 38 counts being based under that section, and they are substantive offenses, not any charge of conspiracy, and none of these statements, none of these situations, none of these conversations that the witness has related, in so far as the defendant Robinson is concerned, are in any way, shape, or form binding upon him, and hearsay, and incompetent, and your Honor will note from the opening statement of the District Attorney that Mr. Robinson had not even met these persons at that time.

The COURT.—What have you to say to that?

Mr. SWEENEY.—Just this, that the Government is showing a scheme, and in the performance of that scheme admissions or statements made by one of the—I was going to say one of the conspirators—one of the persons, one of the defendants, binds the others, if it was for the purpose of furthering the scheme.

The COURT.—Your contention is the way of proving a scheme or artifice like this, that it is as proving a conspiracy?

Mr. SWEENEY.—Absolutely. If we can connect Mr. Robinson up with this scheme at any time, he is responsible for everything.

The COURT.—Is it your theory that statements made by those engaged in the common design can

be used against one another irrespective of whether there is a conspiracy or not.

Mr. SWEENEY.—If you will indulge me for a minute or so I will find it for you.

Mr. McMILLAN.—My further point is this, as far as my client is concerned, that he did not even know any of the parties [342] at that time.

The COURT.—That goes to different points.

Mr. McMILLAN.—It is in line with what may be connected up.

The COURT.—We have the whole record to find out whether it is connected up, or not. I think that point has been pretty well covered, that at the present moment there is not in the record statements which connect up the parties who are on trial.

Mr. McMILLAN.—Furthermore, it is too remote, and *res inter alios acta*, and hearsay.

Mr. SWEENEY.—May I quote the syllabus from *U. S. vs. Belden* found in 223 Fed. 726: (Reading.)

The COURT.—I will overrule the objection.

Mr. McMILLAN.—Note an exception. I move to strike out all of the testimony of the witness so far as my client is concerned, and ask that it be limited only to those defendants which he has named.

The COURT.—The ruling on that would have to be made much later, but at this time, the Court, under the stand taken by the Court, will overrule the objection. I can see the possibility of that being reviewed at a later time.

Mr. McMILLAN.—May I note an exception, and

(Testimony of Mrs. Emily A. Beans.)

have the privilege of renewing this motion?

The COURT.—The record will so show.

Mr. SWEENEY.—Q. Now, Mrs. Beans, would you tell us the conversation that you had with Mr. Kassmir in his office at the Mills Building when Mr. Cromwell Simon was present?

Mr. McDONALD.—Objected to on behalf of the defendant Kassmir, that it is immaterial, irrelevant, and incompetent, and not within the issues laid in the indictment.

The COURT.—Overruled. [343]

Mr. McDONALD.—Exception.

Mr. HARRIS.—We adopt the objection made by Mr. McDonald.

The COURT.—The same ruling.

Mr. HARRIS.—Exception.

A. Mr. Kassmir explained to me about the business, how, in buying the stock, it was the partial payment plan, and that it would make it easier for me, and they could earn money, and I would not have to put in very much money, and in three months probably I could sell them and make quite a bit, and I finally consented to let it go on, and it went on.

Mr. SWEENEY.—Q. Mrs. Beans, was anything said at that time with reference to the purchase of Studebaker stock?

A. Yes; they claimed they had already purchased it from me.

Only a few days after this Mr. Randolph and

(Testimony of Mrs. Emily A. Beans.)

Mr. Kassmir came to my home on Birch Court; I could not tell you the date, but it must have been in April, because, as I say, I have tried to forget those things. Mrs. Durham, my niece, was present at the conversation at this time. Possibly, Mrs. Durham had been present at previous conversations had with these people, but I don't remember that they had ever been over before together.

EXCEPTION No. 7.

Q. On that occasion, what was the substance of the conversation?

Mr. McGEE.—Objected to on behalf of the defendant Orton Goodwin, on the ground it is immaterial, irrelevant, and incompetent, and hearsay.

The COURT.—Overruled.

Mr. McGEE.—Exception.

Mr. McMILLAN.—That objection and exception is adopted by the defendant Robinson.

The COURT.—The same ruling. [344]

We borrowed \$2,500.00 at the bank; we talked it all over together about the borrowing money; I know they encouraged us very much in doing it because they said that Studebaker was going up; whether they just said, "Go ahead and do it," or what, I don't know, or whether we said we would do it, we did it. We borrowed \$2,500.00, and instructed them to buy Studebaker with it.

EXCEPTION No. 8.

Mr. SWEENEY.—Q. How did you borrow that \$2,500?

(Testimony of Mrs. Emily A. Beans.)

Mr. McGEE.—Objected to as immaterial, irrelevant, and incompetent.

Mr. McMILLAN.—I adopt the objection.

The COURT.—Overruled.

Mr. McMILLAN.—Exception.

I had collateral and took it to the bank and they let us have the money. It was one hundred shares of the Pacific Lumber Company stock. The bank took it as collateral for the amount of \$2,500.00. Mrs. Durham, my niece, went with me to the bank to get the money. I don't think we had yet consulted the bank when we came over to Cromwell Simon's rooms on some business, the nature of which business I do not recall. Then Mr. Kassmir and Mr. Randolph took their machine and brought us across the bay, and we supposed they were going to take us right to the bank; instead of that, taking us to the bank, they let us off a block from the bank, and they went on, and moved on somewhere while we were in the bank consulting the officials of the bank. That day we did not get any money from the bank, but we got the promise of it; a day or two afterwards, two or three days after, something like that, we got \$2,500.00. We called up by phone and let Mr. Kassmir and Mr. Randolph know we had a check ready for them. I think it was Mr. Kassmir I talked with over the phone. That afternoon about two o'clock Mr. Randolph and Mr. Kassmir came over. I gave them the check for \$2,500.00. At the time I gave them the \$2,500.00 [345] check, I do not think I signed any contract. They

(Testimony of Mrs. Emily A. Beans.)

were going to buy Studebaker with it. In answer to your question, when was the next time you saw any of the defendants: Well, I do not think I could tell just how long it was before we saw them again, because—now, I am branching out a little bit to tell his, but this all comes to the story. Mr. Kassmir commenced to talk to my niece about bringing some of her funds over. This conversation was had in my presence. Just Mr. Kassmir and Mr. Randolph were present. This conversation between myself, Mr. Randolph, Mr. Kassmir and Mrs. Durham, my niece, took place, I will say in May, 1925, but I may be a little off.

EXCEPTION No. 9.

Mr. SWEENEY.—Q. What was the conversation, Mrs. Beans?

Mr. McMILLAN.—On behalf of the defendant Robinson I object to this testimony upon the ground that it is incompetent, that it is hearsay, that it is a transaction had between strangers, it is too remote, and it does not in any way, shape, or form show that Mr. Robinson was engaged in any joint enterprise or in any conspiracy, or in any manner, shape, or form aided, abetted, or assisted any of the defendants charged in the indictment, and that this testimony sought to be elicited, as well as all previous testimony elicited from this witness, is not within any count of the indictment before the the Court.

The COURT.—The objection is overruled.

(Testimony of Mrs. Emily A. Beans.)

Mr. McMILLAN.—Exception.

At the first meeting between myself, Miss Durham, Mr. Kassmir and Mr. Randolph, Mr. Kassmir tried to have her get money from the east, and I would not want to use the words that he used, because she was not willing to pull her money out back east and bring it out here and place it with them and buy stock. Mr. Randolph was present. He tried to argue the point with her, and told her what all he could do for her if she would bring her money here. He [346] said he would build it up very wonderfully, made good promises, I could not tell definitely just what promises he made, but he made good promises about what he could do for her. I know Miss Durham did bring some money from the east; but I don't think I could tell approximately how much. She turned the money over to Mr. Kassmir to buy stock, and he was trying to look up something, that he felt very sure would go up, and at the same time he said, as he was putting it, he was keeping it up his sleeve quite a while, but bye-and-bye he would be ready to purchase the stock. They got the money, but I couldn't say how much. [347]

The particular character of stock Mr. Randolph and Mr. Kassmir said they were going to buy for me and Miss Durham—in the first place we bought Studebaker, we got 250 shares of Studebaker.

EXCEPTION No. 10.

Mr. SWEENEY.—Q. To return, Mrs. Beans, to

(Testimony of Mrs. Emily A. Beans.)

the conversation you had with reference to the \$2,500 incident, you recall that?

A. Yes.

Q. Can you remember any specific thing that Mr. Randolph said upon that occasion?

Mr. McGEE.—Objected to on the behalf of the defendant Goodwin on the ground it is immaterial, irrelevant, and incompetent, and not responding to any allegations in the indictment, and hearsay.

Mr. HARRIS.—We adopt the objection on behalf of the defendant Randolph.

Mr. McMILLAN.—We adopt that objection on behalf of the defendant Robinson.

The COURT.—Overruled.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

A. When we borrowed that money, Mr. Kassmir, especially, I remember, promised us if we got into trouble, if we had to hold it in the bank longer than we expected to and got into trouble, and did not have money to meet things, they would stand back of us.

(The witness is here shown a letter, which she states she received through the mail, and had seen before, and that she recognized the signature. The letter was marked, [348] U. S. Exhibit 2 for identification.)

Along about the late spring of 1925, Mr. Kassmir and Mr. Randolph called frequently at our house. They talked about the bank well in the

(Testimony of Mrs. Emily A. Beans.)

summer, along in late summer, the date I cannot testify to, because I have tried to forget them, but along in late summer they told us about forming a bank over in Reno, and they wanted us to put our money in it, that it was going to be such a big thing. When I speak of "they" I mean Mr. Kassmir and Mr. Randolph. They reckoned it up and found out what we had, and they put the percentage that they thought we would make a year—Mr. Kassmir put it at 12 per cent, and Mr. Randolph spoke right up in these words, he said, "Harry, you better call it 8 until we get well started down at Los Angeles," so then Harry put it at 8, and said that the common dividend at the end of the year would probably be 25 per cent.

EXCEPTION No. 11.

Just prior to that time, did you have another conversation with Mr. Randolph and Mr. Kassmir with reference to your stock.

Mr. McMILLAN.—That is objected to on behalf of the defendant Robinson on all of the grounds heretofore stated, and for the same reasons.

The COURT.—Overruled.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. You may answer.

A. There came a time when the stocks were sort of hanging low, and so they came to us and wanted us to give up our stock, that is, let them use the money—they did not have any stocks, never did have—and let them use the money, and they would give us—they could use it to good advantage in their

(Testimony of Mrs. Emily A. Beans.)

business, and they would give us \$200 a month while they used it, and then when the stock [349] got good, then they would put it back in the stock. They took our money and they paid us \$200 a month for two months, and that was when the bank sprung up. So I was very anxious to have a little more than what I had, and offered to put a mortgage on my home of \$4,000.

EXCEPTION No. 12.

Mr. SWEENEY.—Q. Would you please tell us the conversation you had with Mr. Randolph and Mr. Kassmir relative to the mortgage on your house?

Mr. McGEE.—Objected to on behalf on the defendant Goodwin on all of the grounds heretofore stated.

Mr. McMILLAN.—The objections urged are adopted by the defendant Robinson.

The COURT.—I will overrule the objection.

Mr. McMILLAN.—Exception.

Mr. Kassmir said he would look after it for me, would take charge of it, and look after it, and he got it fixed up in Mr. Robinson's office, and we went there.

Mr. SWEENEY.—Q. Before you go there, will you tell us what conversation you had with these men when the subject of a \$4,000 mortgage was broached?

A. They were very pleased over it; I cannot just tell the words that were used.

(Testimony of Mrs. Emily A. Beans.)

Q. When you say they were very pleased, who have you reference to?

A. Mr. Kassmir and Mr. Randolph. Where we saw one we saw the other.

I mortgaged my home at that time. The papers relative to that mortgage were drawn up in Mr. Robinson's office and I went there and signed it. He was present. It was all ready for me to sign; I believe he did it, but I don't know who did it, but they were all ready to sign. I actually got the \$4,000 from a broker over in Oakland; and paid it over to Kassmir and Randolph. [350]

EXCEPTION No. 13.

Q. Up to this time, Mrs. Beans, how much money had you and Miss Durham given to Mr. Randolph or Mr. Kassmir, if you know, of your own knowledge?

Mr. McGEE.—I object to the question on behalf of the defendant Goodwin on all of the grounds stated in the previous objection.

Mr. McMILLAN.—I adopt the objection on behalf of the defendant Robinson.

Mr. HARRIS.—And on behalf of the defendant Randolph.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Exception.

A. Between us, my niece, Miss Durham, and myself, we put in \$12,056, into what they called their Reno bank.

(Testimony of Mrs. Emily A. Beans.)

Yes, I did get stock in that Reno bank, as I call it; but it was not made out right; we got a certificate, and it was not made out right, and then Mr. Kassmir took that back and sent it back and we got another, and that still, the names were not put in right, and then he took that the last time that we saw him—yes, the last time that we saw him he took that certificate and that was in—that must have been along in January or February, 1926—and said that he would send that back to Reno and have it fixed right, but we never got one in return. (Witness is here shown stock certificates, one No. 4 and one No. 5, capital stock, Preferred, of Cromwell & Co., Inc., Place of Business, Reno, Nevada, Office of Resident Agent, 315 Clay Peters Building, Reno, Nevada; and identifies same. The documents were marked U. S. Exhibit 3 for Identification.)

(Witness is here shown two more certificates and asked to identify same.) [351]

One of them I don't know anything about; this one is wrong and that one is wrong. I presume I saw them before; I sent them back. I do recognize one of them. This one positively, but that one has my name and number of shares, but I am not able to identify it. (One of said certificates, being certificate No. 55, is here marked U. S. Exhibit 4 for Identification.)

When we first got these certificates we put them in an envelope and sent them back and told Mr. Kassmir the names were wrong. Again he sent us another, and that was not right. Sent it back and

(Testimony of Mrs. Emily A. Beans.)

the last time we saw him we gave the last one to him, and he put it in his pocket and said, "I will attend to this," and it has never been attended to.

Referring again to the \$2,500 note, it fell due the first of October, 1925. We owed \$1,500 then and we appealed to Mr. Kassmir to furnish us with \$1,500 for another three months, or till we could make a new loan to help us out, and he promised to do so, and so he finally sent us up \$1,500 from Los Angeles, and at the same time said—now, Mr. Randolph did this, it was his letter that the check came in, the \$1,500, and he said in that letter, "Send the collateral." I am familiar with Mr. Randolph's writing. It may have been addressed to Miss Durham as what was one was the other. We transacted our business together as one person. Yes, I received dividends from the Reno Bank, as I call it. We got dividends in October—we got \$241 in October, \$241 in January, \$241 in April, and that ended it; it has been dead ever since. The first dividend I got from Los Angeles, Mr. Randolph sent it. The second dividend from Mr. Kassmir, from Seattle. The third dividend was received from Mr. Kassmir. In answer to your question whether I ever got any stock from the Cromwell Simon Company,—we were to have been furnished some bank stock but we did not have a thing in [352] our possession to show for it. No, never got any Studebaker stock. What they call their bank stock is that you have shown me. These certificates are the only thing that I have to show with

(Testimony of Mrs. Emily A. Beans.)

reference to our investment, and we have not got them, because we gave the last one to Mr. Kassmir to be fixed right, and he said he would do it, and it has never been done.

EXCEPTION No. 14.

Mr. SWEENEY.—That is all with this witness at this time, your Honor.

Mr. McGEE.—Before any questions are asked of the witness on cross-examination, I move on behalf of the defendant Goodwin that the entire testimony of this witness be stricken from the record on the grounds previously outlined to your Honor.

Mr. SWEENEY.—We expect to connect it up with Mr. Goodwin.

The COURT.—The objection will be overruled.

Mr. McGEE.—Exception.

Mr. McMILLAN.—May we have the benefit of that motion and your Honor's ruling?

The COURT.—The same ruling.

Mr. McMILLAN.—We respectfully note an exception, your Honor.

Cross-examination.

(By Mr. HARRIS, Attorney for Defendant Randolph.)

The first conversation was along about in March, 1925; that was when Mr. Randolph came over and talked to me about investing in some Studebaker stock. He told me that was the Studebaker Automobile Company that makes Studebaker cars and

(Testimony of Mrs. Emily A. Beans.)

that is what I understood I was investing in. Also he told me that it was his understanding that my stock would remain as collateral. I was surprised when I received that message from Mr. Scott on the telephone, and I went right to Mr. Scott's [353] office. All that Mr. Randolph said was, "They all do it." That is about all the comfort he could give me. He acted like he was upset, too. Then I went on down to Scott's place and there I met Mr. Simon and Mr. Kassmir. Afterwards I went up to the office of Cromwell Simon Company and saw Mr. Kassmir and Mr. Simon. I do not think Mr. Randolph was there in the room during that conversation. They claimed they had already bought the stock, and I just let it go; you see, it was a partial payment arrangement, and so I let it go. I think that if I had made a real fuss about it they would have given me my money back, maybe, and I could have gone and bought my stock again—I don't know whether they would, or not, but they made me such a good promise, that really and truly I thought they meant what they said; they won my confidence. The stock was already sold; my goodness, it was already sold, and had passed into the broker's hand. No, I never said that Mr. Randolph suggested that I should get a mortgage on my place. I guess we talked it over together, and I was willing to do it. I don't remember that Miss Durham used the expression in that conversation, "Now, Mr. Randolph is not saying anything, evidently he is against this proposition," and I said, "Well, we ought to know

(Testimony of Mrs. Emily A. Beans.)

what we want to do, and it is not so much Mr. Randolph's business, anyhow," or words to that effect. Miss Durham was there. We sat around in the parlor and chatted generally; we talked business pretty nearly all the time whenever they were in the house. I don't remember that Mr. Randolph talked much in that conversation. Right at first Mr. Randolph told me that he was only working for this company, in March, and later on, I could not tell when it was, when he came over to my house, he was introduced as general manager, as one party of the company. I don't *to* remember exactly the words he used. It went over a long period and a lot of transactions. [354] These specific lumber company's stock (the A. W. Scott stock) was more than \$3,600 or \$3,200; I do not remember just what the par value was. I paid \$3,100 for what I had. I did not know at that time that this stock had gone down and was only valued at about \$1,800. I think that is all they got for it, or all they represented to us, I think a little less than \$1,800 was represented to us. I don't know whether that concern has now gone out of business or not. In the conversation about the mortgage there was no talk about a bank, as I call it; the bank had not sprung into existence then—I don't know—let me see when the mortgage was—yes, I think the bank had sprung into existence, because I was anxious to put in more money than what we could raise, and that was the reason why. In answer to your question about whether I took that mortgage over to a broker

(Testimony of Mrs. Emily A. Beans.)

in Oakland, and whether I recall to whom I took it,—I did not do it. Mr. Kassmir attended to the whole thing, and all I had to do was to go to Mr. Robinson's office and sign up the papers, and then the broker in Oakland came to me and gave me a little book and showed me how much interest I had to pay every month, and that interest had to be paid every month until paid off. Mr. Robinson had nothing to do with me at all in regard to that mortgage personally, about what I was going to do, or anything about it; he simply made up the paper, or had them made up. He knew what was going to be done with the money; there was talk there that I was putting a mortgage on my home so as to buy more stock in the company. I did not say a moment ago that he knew nothing about this; he could not very well help knowing because it was all talked over in his office, but he had nothing to say about it. He did not try to influence me in any way. I had been in his office before; I had never seen him much; I was not well [355] acquainted with him; it was what you might call a most casual acquaintance. I don't think Mr. Randolph was present in the Hobart Building; he might have been but I don't recall it. When the money was turned over to the company I don't know; I don't recall having any further conversation with Mr. Randolph either as to the character or amount of stock that I was going to buy; I may have; I don't recall; I may have talked it over with him. It was only a few days between the time I signed the mortgage

(Testimony of Mrs. Emily A. Beans.)

and the time that I finally got the money from the mortgage and turned it over to the Cromwell Simon Company. No, I have not been talking this matter over very considerably with Miss Durham; once in a while we talked over dates; but we have not hashed it over very thoroughly. We talked it over some, what we could, with Mr. Madeira; we have only seen Mr. Madeira a little while at a time, a couple of times. Mr. Madeira was over to our place only twice. The first time he was there maybe an hour and a half, or maybe two hours, I could not say. The second time not so long. He did not talk to us about these respective parties as he said he could use some of it. He did not tell us about a letter which I should write along about October, 1927, to Randolph. I did not write a letter to Mr. Randolph at his suggestion about October, 1927, to Mr. Randolph. I talked the matter over with Mr. Sweeney slightly, about fifteen or twenty minutes I should judge. I could not tell you anything that Mr. Madeira told me about the bank over in Reno as I recall it, if I tried, I do not think I could repeat a single thing. I think he told us he saw our certificate over there, I have not thought anything about whether I could repeat anything in my conversation with Mr. Madeira or in regard to this bank over there. I would have to try and think it up. He gave us to understand that we were duped and that there was nothing there, that he could not find anything. That was not the first time

(Testimony of Mrs. Emily A. Beans.)

I became incensed or had any hard feeling toward Mr. Randolph. [356]

Mr. Madeira came to see me in January, 1928, the latter part, I believe. I did not, before that, write Mr. Randolph, in a very cordial tone. I wrote him a severe letter; I got a long answer. I still have that letter and answer. I think I have a copy of the letter in the house. The letter that I refer to is dated in October, 1927. I think there must be three sheets. We wrote sometimes to try and help us out with Mr. Kassmir. He wrote back that he would try to do it, and he really did try to do it. He sometimes telegraphed to him and told him to send down a check. We saw him. He did not tell us he came up to help us out in any way he could. He came up and we talked Mr. Kassmir over—that we were beholden to Mr. Kassmir for our help, and he told us he did not know anything about Kassmir—he did not even know how his business was. He had heard it was very flourishing but did not know, he had not been up there. He said he was in Los Angeles and Mr. Kassmir was in Seattle. I cannot go back and tell what was said in the other conversation with Mr. Madeira. Perhaps, Mr. Madeira can tell you when he gets around to it. That was in January and I will confess I don't know what was said—exactly. I was sick in bed for two months with “flu” in January and February. My memory has not served me quite as well when I was sick.

(Testimony of Mrs. Emily A. Beans.)

Cross-examination.

(By Mr. McDONALD for Defendant Kassmir.)

Mrs. BEANS.—On the occasion of my trip to Cromwell Simon Company in relation to the stock of A. W. Scott, it was not Mr. Cromwell Simon I discussed this matter with, but Mr. Kassmir. I am quite positive of that. Mr. Simon was in the room, I was introduced to him. He sat in the room for a little while, but as I remember it, he got up and went out and Mr. Kassmir was the one that explained to me all about the method and how well they could do by me—how much money they could make for me if I would [357] only stay with them. He said, “We’ll buy the stocks,” and that we should pay for it on the partial payment plan, so I bought one hundred shares. After that, I think it was in January, Mr. Kassmir came to my house one evening and told me I had been very badly duped by Cromwell Simon. He promised time and time again that he would personally try and pay me back everything that I lost. He has not sent me a number of checks, two or three checks. He promised to pay me back, but he has not done it. He has never sent me any money since that time.

Redirect Examination.

(By Mr. SWEENEY.)

I was 78 years old last January, 23d. Mr. Madeira’s two visits were about ten days apart. I wrote other letters to Mr. Randolph in addition to

(Testimony of Mrs. Emily A. Beans.)

the letter of October 26, 1927, prior to that time and received answers to them. Those letters were always more or less opened by myself and my niece in one another's presence. Our mail was common. Aside from the two payments made after I had signed the contracts with Mr. Kassmir and Mr. Randolph and another, three payments of the company up in Reno, of the bank in Reno, I did not get a cent from Randolph and Kassmir. I don't think I saw Cromwell Simon but three times in the times I was at the office. He did not seem inclined to talk to me at all.

EXCEPTION No. 15.

Mr. McGEE.—I move to strike from the record, on the grounds previously stated, first, that this lady, according to her testimony, parted with whatever value she parted with not on the basis of any letters received by her through the mail, but on the oral representations of Randolph and Kassmir, and that there is nothing in the testimony of this witness pointing to the allegation of the indictment that the mails were used to defraud; whether she was defrauded actually, or not, is not a question for this Court. The question before this Court and jury is whether [358] she was defrauded through the use of the mails, and, according to the testimony of this witness, she was not defrauded by the use of the mails, but if she was defrauded at all it was by the oral representation made by Kassmir and Randolph; on the further ground, if your Honor

(Testimony of Charles Burke.)

please, in so far as the defendant Goodwin is concerned, that the testimony is hearsay, immaterial, irrelevant, and incompetent.

Mr. McMILLAN.—As to the defendant Robinson, we join in that motion in all respects.

Mr. HARRIS.—And the defendant Randolph joins in it, except as to the third specification.

The COURT.—It will be overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

TESTIMONY OF CHARLES BURKE, FOR THE UNITED STATES.

CHARLES BURKE, produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. SWEENEY.)

I am a Deputy County Clerk of the City and County of San Francisco. There has been filed in that office a certificate of Harry Kassmir and Cromwell Simon for doing business under fictitious name. (Here there was offered in evidence a certificate of copartnership of Cromwell Simon Company, dated February 24, 1925, and it was stipulated that it be read into the record, and that the original document be returned to the authorities of City and County of San Francisco.) (At this time the witness was also shown a certified copy of the decree of the Superior Court of the State of Califor-

(Testimony of Charles Burke.)

nia in and for the County of San [359] Francisco in Cromwell Simon and Co. vs. Edward Doherty, Commissioner of Corporations, said decree being entered in open court on the 17th day of February, 1925, and indorsed, filed Sept. 25, 1925. There was no objection on the part of any of the defendants and the document was marked, U. S. Exhibit 1.) Said U. S. Exhibit 1, being as follows: Certified Copy of Decree, Cromwell Simon & Co. vs. Daughtery, etc., No. 158735, Superior Court, S. F., Cal.; the original exhibit being before this Honorable Court by stipulation and order.

TESTIMONY OF E. H. BEEMER, FOR THE
UNITED STATES.

E. H. BEEMER, produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. SWEENEY.)

My occupation is that of County Clerk of Washoe County, Nevada. (At this time there was exhibited to the witness documents which he identified as the original record in the office of the County Clerk of Washoe County, Nevada, of the Articles of Incorporation of Cromwell & Co., and an exemplified copy of the original record. The exemplified copy was offered as United States Exhibit 5 for Identification, and so marked.) The minutes of the meetings of that corporation are not filed in the County Clerk's office up in Nevada.

TESTIMONY OF HOWARD C. ELLIS, FOR
THE UNITED STATES.

HOWARD C. ELLIS, produced as a witness on behalf of the United States, having been first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. SWEENEY.)

I am an attorney at law, and specifically, Assistant Commissioner of Corporations of the State of California. I have been in that office for four years and have been Assistant for about a year.
[360]

(Here the witness identified a document as an application for broker's certificate from Cromwell Simon, which was admitted and marked U. S. Exhibit 2.)

A broker's license was issued and shortly after that, February 18, 1925.

(Here witness was shown a file which he identified as part of the files of Cromwell Simon in the records of the Corporation State Department, and specifically, the broker's certificate or license issued February 19, 1925, and the revocation of the same, which was admitted in evidence, and marked, U. S. Exhibit 3.)

(Here the witness is also shown documents which he identified as part of the records of the State Corporation, consisting of an agent's application blank filled out for agent's license. There being

(Testimony of Howard C. Ellis.)

no objection, the document was admitted in evidence and marked U. S. Exhibit 4.)

(Here witness was also shown a document which he identified as the application of Cromwell Simon and Harry Kassmir, doing business under the fictitious name of Cromwell Simon & Company for a broker's certificate, dated April 7, and received in the Sacramento office, April 13, 1925, and a certificate issued April 13, 1925, which was admitted in evidence and marked U. S. Exhibit 5.)

(Here was exhibited a document to the witness which he identified as an order of the Corporation Commissioner granting Cromwell Simon & Co., a broker's license, which was admitted in evidence and marked, U. S. Exhibit 5.)

EXCEPTION No. 16.

Mr. SWEENEY.—Q. I will show you this and ask you if you can identify it.

A. I recognize it.

Mr. SWEENEY.—You are familiar with these, Mr. Harris?

Mr. HARRIS.—Those are the agent's licenses?
[361]

Mr. SWEENEY.—Yes, issued under the Cromwell Simon brokerage license.

Mr. HARRIS.—Yes, I have seen them.

Mr. SWEENEY.—At this time I want to offer in evidence as one exhibit the application of J. W. Randolph for authority to act as broker's agent, and the order, both of which are dated April 20,

(Testimony of Howard C. Ellis.)

1925, also a similar document for Orton E. Goodwin, J. Edward McClintock and W. Claude Owen.

Mr. McMILLAN.—On behalf of the defendant Robinson, I object to the introduction of these documents in evidence on the ground that there has been no showing whatever concerning his knowledge of the matters therein contained, they are in no way binding upon him, and, therefore, are incompetent as to him.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

EXCEPTION No. 17.

Mr. SWEENEY.—Q. I will show you this, here, and ask you if you can identify that, Mr. Ellis (exhibiting to witness a document purporting to be a revocation of the license of Cromwell Simon & Co.).

A. I recognize that, yes.

Mr. SWEENEY.—At this time I wish to introduce this particular document in evidence. I think you gentlemen are familiar with it.

Mr. McMILLAN.—Objected to on behalf of the defendant Robinson on the ground that so far as he is concerned the proper foundation has not been laid, that it is hearsay, and incompetent.

Mr. HARRIS.—The same objection on behalf of the defendant Randolph, and the further objection that it is in no way binding upon him.

Mr. SWEENEY.—We will connect it up later on.

Mr. HARRIS.—Do I understand it is part of the case to [362] have the license revoked?

Mr. SWEENEY.—No, it is not to have it revoked. It is part of this case to have it continued in force.

Mr. HARRIS.—The point I make is that no implication should be transferred to my client by the fact that Cromwell Simon & Company had their license revoked, and, therefore, it is immaterial, irrelevant, and incompetent as to him, and no foundation has been laid as to him.

The COURT.—I do not believe there has been any foundation laid to place it in evidence, even if it was revoked. There is nothing to indicate they had notice of it. I think it can be received only for identification.

Mr. SWEENEY.—If a part of the scheme is to maintain the license of Cromwell Simon any effort made by them to retain that license is admissible in evidence, it is part of the *res gestae*, it is part of the whole scheme to defraud.

The COURT.—Do I understand that you hope to show that it was revoked, and that there was an attempt made later—

Mr. SWEENEY.—Not only that, but after that date—

The COURT.—Just a minute. Answer my question. Do I understand then you want to introduce the fact, if it is a fact, that there was a revocation, and subsequently they tried to have it set aside. Is that what you are trying to show?

(Testimony of Howard C. Ellis.)

Mr. SWEENEY.—Yes. I will ask Mr. Ellis a question.

Q. Mr. Ellis, was a copy of that mailed to the applicants? A. It was mailed.

The COURT.—Did you personally mail it?

A. I personally saw to it; I was present when it was drawn up and saw that it was sent out, saw it signed.

Mr. McGEE.—I still object to that, and ask that the answer be stricken out on the ground that this witness did not himself either mail the letter or personally see it mailed. [363]

A. I did not chase after the letter, no, but I saw it go out of the office in the United States mail.

The COURT.—Q. You saw it placed in the hands of the postman?

A. In the hands of our mailing clerk to be deposited with the postman, yes.

Mr. McGEE.—I urge the objection, and ask that the answer be stricken out, on the ground that he cannot personally say he saw the letter mailed.

The COURT.—I think you are anticipating something. It has not been offered yet.

Mr. SWEENEY.—At this time I would like to offer in evidence this particular document, which you, Gentlemen, are probably familiar with.

Mr. McGEE.—I make an objection on the same grounds previously stated.

The COURT.—I will sustain the objection. I cannot see the bearing of this document upon any possible issue in this case, unless it was brought

to the knowledge of individuals involved. I do not think you have built up circumstantially, or by direct evidence, yet, that it was. [364]

Mr. SWEENEY.—If it was mailed to the people interested, the presumption is it was received.

The COURT.—If it had been dropped into the postoffice box, I would concede your position.

Mr. SWEENEY.—If it had been mailed in the ordinary course of business conducted by a big organization or a big concern, it would be.

Mr. McGEE.—If you were attempting to prove the mailing of notices at the time of the probate of a will, or something of that kind, you would have to come in with an affidavit of the person mailing the notice; that is the only way you could prove it, by the person who mailed it. I submit that it is not admissible in evidence for two reasons previously stated, and on the further ground that no foundation has been laid that it was ever brought to the attention of the defendants, or of either of them.

The COURT.—I will sustain the objection. It will be received for identification.

Mr. SWEENEY.—Is the reason that it is not received in evidence because the Government has not yet proved it was properly mailed?

The COURT.—It has not been proved that it was properly mailed, or that it had come to the attention of the defendants.

Mr. SWEENEY.—In the record so far we have a decree by Judge Deasy setting aside the injunc-

(Testimony of Howard C. Ellis.)

tion granted against the Corporation Commissioner for revoking their license, so we have already covered in the record that it must have been brought to their attention.

Mr. HARRIS.—It is still not brought to the attention of Randolph.

Mr. McGEE.—Nor brought to the attention of the defendant [365] Goodwin.

The COURT.—I think that is a good point. The objections heretofore made will be overruled, and it will be received in evidence.

Mr. McGEE.—Is it in evidence for all purposes against all the defendants—against the defendant Goodwin?

The COURT.—The Court has not made any exception in the ruling.

Mr. McGEE.—We note an exception.

Mr. HARRIS.—We note an exception as to the defendant Randolph.

Mr. McMILLAN.—And we note an exception as to the defendant Robinson.

(The document was marked U. S. Exhibit 7.)

EXCEPTION No. 18.

Mr. SWEENEY.—Q. Mr. Ellis, you personally held this hearing on which this particular decree was predicated?

A. I personally conducted the hearing.

Q. Who was present at that hearing of the defendants, if you know?

(Testimony of Howard C. Ellis.)

A. Cromwell Simon and Harry M. Kassmir.

Q. At that hearing which one of the defendants took the stand?

A. Cromwell Simon took the stand.

Q. Were certain exhibits offered by him in evidence at that time? A. There were.

Q. At this time I will show this letter and ask you if you can identify it. A. I do.

Q. When did you see that for the first time?

A. That was filed at that hearing.

Q. By whom?

A. March, 1925, by Cromwell Simon & Co.

Mr. SWEENEY.—At this time I will ask that this be introduced in evidence and if it is accepted I will read it later. [366]

Mr. McGEE.—Objected to on behalf of the defendant Goodwin on the ground that it is not binding on him, immaterial, irrelevant and incompetent, hearsay, secondary evidence, it not having been shown that Goodwin knew anything about its contents, no foundation has been laid.

Mr. SWEENEY.—It purports to be a financial statement of that concern on a particular date, filed by Cromwell Simon, in the presence of Harry M. Kassmir, at a hearing held by the Corporation Commissioner.

Mr. McMILLAN.—Held at what date?

Mr. SWEENEY.—On the date that Mr. Ellis testified to.

Mr. HARRIS.—It appears to be a summary of certain books, and nothing is shown that the de-

(Testimony of Howard C. Ellis.)

defendant whom I represent, or any of the other defendants, had particular access to those books, or had the care or control of those books. That was exactly the point upon which the Doble Case was reversed by the Supreme Court. They attempted to introduce a *résumé* of certain books just as they are doing here, and Judge Preston at that time held that by implication you could not hold a person responsible in that sort of fashion. If your Honor please, I have the decision here.

The COURT.—I understand that, but I do not believe that it would support the defendants in this case.

Q. Who presented that at the hearing in behalf of the Cromwell Simon Company?

A. It was presented by both sides; it was stipulated by Cromwell Simon and Harry Kassmir that it might be used by both sides.

Q. Who spoke for the company?

A. Cromwell Simon, in that case.

Mr. HARRIS.—If your Honor please, with your Honor's permission I move to strike out the statement of the witness in response to your Honor's question on the ground that it is his [367] conclusion, and not the best evidence, the record of the hearing being the best evidence.

The COURT.—Overruled.

Mr. McMILLAN.—We desire to adopt the objection of Mr. Harris, on behalf of the defendant Robinson.

(Testimony of Howard C. Ellis.)

Mr. SWEENEY.—At this time I offer it in evidence but I will not read it until later on.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—May we have this understanding, that when one counsel notes an exception that the other counsel do not have to note an exception.

The COURT.—I will make no further statement, I think it is very well understood by counsel what has been said. I have explained it two or three times, and you are only going over the same thing.

Mr. McMILLAN.—I simply do not want to tax your Honor's patience. [368]

The exhibits which you have offered in evidence are Exhibits 1 to 6 introduced in the hearing held by the Corporation Department, conducted by me, and representing purchase agreements of Cromwell Simon Co., with different parties whose names appear on these agreements. These were produced at the hearing, some of them by Harry Kassmir, and some by Cromwell Simon. They were read in the presence of both. These are McClintock agreements, and not of different parties. There were other agreements introduced, but these six do not represent any of them. They were produced by Harry M. Kassmir.

EXCEPTION No. 19.

Mr. SWEENEY.—At this time I offer these purchase agreements in evidence, signed by L. M. McClintock.

Mr. McMILLAN.—On behalf of the defendant Robinson, the offer is objected to on the ground the proper foundation has not been laid as to him, incompetent, irrelevant, not within the issues of this case, and hearsay as to him; and these purported agreements deal with a time when, as the defendant Robinson, under no possible theory of this case, would he be bound by these documents, or any of them.

Mr. HARRIS.—On behalf of the defendant Randolph, I adopt the objection of the defendant Robinson.

The COURT.—You offer these as showing the activities of these men at that time?

Mr. SWEENEY.—Yes, and that they were subsequently adopted by Mr. Robinson when he entered into the scheme.

The COURT.—You also believe that the activities of this firm were for the purpose of this design?

Mr. SWEENEY.—It was the scheme, part of the scheme.

Mr. McMILLAN.—I ask that the statement of the District Attorney, when he subsequently entered the scheme, be stricken out, as there is no proof whatever he ever entered into any scheme.
[369]

The COURT.—The statements of counsel are not evidence, no matter what counsel may say, unless it is stipulated to. I will overrule the objection.

Mr. McMILLAN.—Note an exception.

Mr. HARRIS.—Note an exception.

(Testimony of Howard C. Ellis.)

(The purchase agreements are marked U. S. Exhibit 9.)

During that hearing I interrogated Mr. Cromwell Simon concerning these purchase agreements.

EXCEPTION No. 20.

Mr. SWEENEY.—Q. Purchase agreement No. 1, “Herewith find money order or check for, as collateral, to apply as first payment on 100 shares of General Motors, Market, 100 shares of Studebaker, Market,”—I will ask you if you asked Mr. Cromwell Simon whether those stocks were bought, the date of that being February 25, 1925.

Mr. HARRIS.—We object to that as leading and suggestive, irrelevant, and immaterial, and not binding upon the defendant Randolph.

Mr. McMILLAN.—The defendant Robinson joins in the objection.

The COURT.—Overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. Do you have a record of that hearing in your hand?

A. I have.

Q. You have refreshed your memory from that record? A. I have.

Q. What was the answer of Cromwell Simon with reference to the purchase agreements?

A. That they had not purchased them.

Mr. HARRIS.—That is objected to as immaterial, irrelevant, and incompetent, hearsay, as far

(Testimony of Howard C. Ellis.)

as the witness is concerned, because there is no foundation laid showing that he made that memorandum, himself, and he testifies he refreshed his recollection from that [370] memorandum, which is pure hearsay.

Mr. McMILLAN.—The same objection on behalf of the defendant Robinson.

The COURT.—Q. You have that in your hand. You just refreshed your memory?

A. I have not refreshed my memory recently from this, but I recall and have read the transcript, however, in connection with this case.

The COURT.—The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. You have an independent recollection of this transaction, also?

A. I have.

Q. I will show you a purchase agreement marked "3," which says, "Herewith find money order or check to apply as first payment on the following, 100 shares Marland Oil, market." Do you recall asking Mr. Cromwell Simon at that time whether those shares were bought?

Mr. HARRIS.—We also object on the same grounds on behalf of the defendant Robinson.

Mr. McMILLAN.—The same objection on behalf of defendant Robinson.

The COURT.—Overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(Testimony of Howard C. Ellis.)

A. Yes, we interrogated Cromwell Simon with regard to each one of these six, and to each one he replied that they had not purchased the security.

Mr. SWEENEY.—Q. Then the next one is March 6, 100 shares of Radio Corporation of America at $63\frac{1}{4}$, the next is March 11, 1925, 100 shares of Union Oil of California at market, 40, the next is March 13, 100 shares of Standard N. J. market, at $42\frac{1}{4}$, the next one [371] is March 13, also, 100 shares Pacific Oil market, at $58\frac{1}{4}$.

Mr. McMILLAN.—The defendant Robinson objects to them on all of the grounds previously stated.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Those are all of Exhibit 9?

Mr. SWEENEY.—Yes.

Mr. Robinson was in the employ of the Corporation Department. He resigned as of June 4, 1925. The date of the hearing was March, 1925; it was continued from time to time, I do not recall the exact date. Cromwell Simon Co. had their offices originally in the Mills Building, and subsequently in 1403 Hobart Building.

EXCEPTION No. 21.

Q. Did Mr. Simon, at the date of that hearing, tell how much money he had taken out as his part of the profits of Cromwell Simon & Co.?

Mr. HARRIS.—Objected to on behalf of the defendant Randolph as leading and suggestive, and the grounds stated in the other objection. (Imma-

(Testimony of Howard C. Ellis.)

terial, irrelevant, and incompetent, and not binding upon him.)

Mr. SWEENEY.—The statement I was about to make is this, the contention of the Government is that the attempt of Cromwell Simon and Mr. Kassmir to continue their license in effect by the opposition to this hearing is a part of the scheme, because we state in the indictment that the obtaining and acting of Cromwell Simon & Co. under a broker's license is part of the scheme.

Mr. HARRIS.—Our contention is that in order to do that the Government does not have to lead as adept a witness as this, that he can relate what was said and done without suggestions from counsel.

The COURT.—The objection is overruled. [372]

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

A. Mr. Cromwell Simon did state the amount of money he had taken out of the business, yes.

Mr. SWEENEY.—Q. What was that?

A. If my recollection is right it was \$2,800.

Q. How much had Mr. Kassmir taken out?

A. A like amount.

Mr. SWEENEY.—Q. How much did Mr. Simon say Mr. Kassmir had taken out?

Mr. McMILLAN.—The same objection, on the further ground that at the date this transaction took place they were strangers, so far as the defendant Robinson is concerned.

The COURT.—At this hearing?

Mr. SWEENEY.—Yes, this statement was made

(Testimony of Howard C. Ellis.)

by Cromwell Simon and Harry Kassmir at that time, and the whole thing is a part of the scheme.

Mr. HARRIS.—I would like to call your Honor's attention respectfully to this, that the foundation has not been laid for this testimony, because the Government has not shown when this scheme terminated, or conspiracy, as counsel sees fit to call it.

The COURT.—I believe that is a matter of connecting up.

Mr. HARRIS.—Then may we reserve a motion to strike this out?

The COURT.—Yes. The objection will be overruled.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—On behalf of the defendant Robinson, may we have the benefit of the ruling reserving the right to make a motion to strike out?

The COURT.—Yes.

Mr. McMILLAN.—Exception.

A. He said that a like amount had been taken out by Mr. Kassmir. [373]

Mr. SWEENEY.—Q. I will ask you if you can identify that?

A. I can.

EXCEPTION No. 22.

Mr. SWEENEY.—At this time I want to offer in evidence the application for broker's certificate of J. W. Randolph, doing business as Charles Wesley Company.

Mr. McGEE.—As far as the defendant Goodwin

(Testimony of Howard C. Ellis.)

is concerned, we object to that as immaterial, irrelevant, and incompetent, hearsay, on the further ground that it is not responsive to any of the allegations of the indictment; there is nothing said in this indictment about Wesley Company. The only names they mention are Cromwell Simon & Co., and Cromwell & Co. There is nothing said about the Wesley Company, and we object to it as not responsive to any allegations of the indictment.

Mr. McMILLAN.—The defendant Robinson joins in the objection, and also that the proper foundation has not been laid.

Mr. SWEENEY.—The position of the Government is this, that when Cromwell Simon Company ceased to function, they started in business as Charles Wesley Company, and continued to do business.

Mr. HARRIS.—Q. Where was that?

Mr. SWEENEY.—In Los Angeles.

Mr. McGEE.—But this crime is charged in the Northern District of California.

Mr. SWEENEY.—The scheme, however, Mr. McGee, might go through the whole country.

Mr. McGEE.—I object to that as immaterial, irrelevant, and incompetent, not responsive to any of the allegations in the indictment.

The COURT.—In other words, you are going to follow it up further than Cromwell Simon & Company?

Mr. SWEENEY.—Yes, we are going to show that they conducted business as Charles Wesley Com-

pany, operating from 1403 Hobart Building, where we are going to leave the Cromwell Simon Company, [374] and there on the same date that they were put out of business by the Superior Court of the City and County of San Francisco, they started in business as Charles Wesley Company.

Mr. McGEE.—This indictment charges that within the State and Northern District of California, Southern Division, the crime of using the mails to defraud was committed. They are going down to Los Angeles, now, which is another district, not in this district, and from there, according to the letter that they have attached to the indictment, they are going up to Seattle. In other words, any place they find Simon or Kassmir doing business under any name, in this district or some other district, they are going to trail him around all through the dealings; I submit, if your Honor please, that the indictment charges this crime was committed in the Northern District of California, and if they subsequently organized a business down in Los Angeles, or Seattle, it is not material.

The COURT.—The whole question is whether it is one common scheme, and the question is to make the connection. I agree with counsel if the connection is not made to show it is all one scheme or course of conduct on the part of the defendants, if the evidence does not connect it up it will not be proper. I will overrule the objection.

Mr. McGEE.—Note an exception.

Mr. HARRIS.—Note an exception.

(Testimony of Howard C. Ellis.)

Mr. McMILLAN.—Note an exception.

(The document was marked U. S. Exhibit 10.)

Mr. SWEENEY.—Q. Do you recognize this, Mr. Ellis?

A. I recognize it as part of our special documents.

Q. And they are what?

A. They are agent's applications by different individuals to represent the Charles Wesley Company, McClintock, Owen and McCaffrey. [375]

Mr. SWEENEY.—Q. Mr. Ellis, with reference to the handwriting in the application of W. Claude Owen, I will ask you if you can identify it.

A. I can.

Q. Whose writing is it?

A. The writing of Mr. Robinson.

Mr. SWEENEY.—That is all from this witness at this time.

Cross-examination.

(By Mr. HARRIS.)

I have not the entire file of the Wesley Company here. (Mr. Sweeney announces that he has the file and Mr. Harris asks him to produce it so that witness may refer to it.) Without examining file do not know length of time Wesley Company continued to have a broker's license. This plan of business that Cromwell Simon & Co. were engaged in was not exactly known as the partial payment plan; they called it the Cromwell Simon Partial Payment Plan of business. We put them out of business just on account of the type of business they were

(Testimony of Howard C. Ellis.)

conducting. I was not permitting other partial pay houses to operate at that time. Corbin & Company were operating at that time on the partial payment plan, but immediately after were put out of business up here by me. At that time the Commissioner did permit them to have a license. As far as I know, at the time information came to me that the partial payment plan of business was operating in San Francisco, there were, upon investigation, two, there were Cromwell Simon & Co., J. H. Corbin & Co., and subsequently, almost immediately thereafter John C. Ship Company. There probably were others.

Q. And, to some extent, there have been partial pay houses running right along, that is, a more limited number, but the plan has been in use: Is that right? A. I am not sure about that.

Q. You are not in a position to say that the City Bond & Finance Company, with which Mr. Paul Rinehart is connected, is not now operating as a partial paying plan? [376]

Mr. SWEENEY.—I wish to interpose an objection to the question as immaterial, irrelevant, and incompetent, and not within the scope of the direct examination. I had Mr. Ellis identify certain records, I had him tell the story of the Cromwell Simon Company hearing before him down in the State Corporation Department. Outside of that, I cannot see where the question is relevant.

The COURT.—What do you hope to prove by this?

Mr. HARRIS.—He has indicated by his testimony with reference to the hearing to revoke Cromwell Simon Co.'s license that the plan and scheme, in itself, was inherently bad, as counsel for the Government attempted to indicate to the jury, that it was a false and fraudulent scheme. Now, I am trying to show by this witness that the scheme, itself, was a partial paying proposition, was recognized by the Corporation Department, and that if anything was wrong with the conduct of an individual business it did not necessarily make the entire operations fraudulent.

The COURT.—Is that the contention, that the plan is fraudulent?

Mr. SWEENEY.—As I said in my opening statement, I said this plan was the vehicle upon which this fraud was perpetrated, it is a part of the scheme, it is the very vehicle by which it was perpetrated.

Mr. HARRIS.—Is it counsel's contention that the partial payment plan is fraudulent in itself? If not, I can restrict my examination very much.

Mr. SWEENEY.—I do not stipulate to anything like that.

Mr. HARRIS.—I am asking what your contention is.

Mr. SWEENEY.—It may not be inherently fraudulent, but the Government contends that it was used as a vehicle for this scheme by the Cromwell Simon Co.

The COURT.—I have no objection to your covering that phase [377] of it, if you want to, if

(Testimony of Howard C. Ellis.)

you believe from the statement of the District Attorney it bears directly upon the issues.

Mr. HARRIS.—I think counsel for the Government has made it pretty plain it is not their particular contention that this scheme, of itself, was inherently fraudulent.

Mr. SWEENEY.—Do not misunderstand me, Mr. Harris, to say that I think the partial payment plan scheme is all right.

Mr. HARRIS.—I will leave that for the jury to determine, rather than to put the implication to them.

Q. Mr. Ellis, this file that I hand you is what?

A. A portion of the file of the Charles Wesley Company.

Q. What portion is it?

A. Agents' applications.

Q. And each one of these pages you hold in your hand, or each two of these pages constitutes one agent's license: Is that right?

A. I also notice that there are some agents' renewal applications here; a renewal application is only one sheet; but other than that they constitute the regular form used by the Corporation Department for agents' applications and renewals.

Q. Starting from what time, Mr. Ellis?

A. September, 1925.

Q. September, 1925, to what date?

A. April, 1927—April 4.

Q. April 4, 1927? A. Yes.

(Testimony of Howard C. Ellis.)

Q. Now, will you just take your file and refer to it and tell me how long the Charles Wesley Company continued to have a broker's license?

Mr. SWEENEY.—Mr. Harris, I do not like to interject, but can you limit that question to how long they had a license as long as they were operating on the partial payment plan?

Mr. HARRIS.—No, I want to show that Charles Wesley Co. were in business up to a certain [378] period, and had never had their license revoked.

A. A part of the file is now in evidence, that is, the original license of 1925, that is not here. I have the license for the year 1926, and the license for the year 1927. That license, by its terms, expired the 31st of December, unless sooner revoked.

Q. Will you refer to the file and see if it is not a fact, Mr. Ellis, that in the year 1928, some time in the spring, the application for license for 1928 was voluntarily withdrawn by Mr. Randolph?

Mr. SWEENEY.—I want to interpose an objection that it is immaterial, irrelevant and incompetent; it might just happen that Mr. Randolph was engaged in other business down there, and unless the question is limited to the Charles Wesley Company, doing business under the partial payment plan, or doing business under the license issued to him in evidence, it is immaterial, irrelevant, and incompetent. I have no objection to Mr. Harris putting in all of the agents' applications that he can find in the record, provided those agents were doing business under the broker's certificate that was is-

(Testimony of Howard C. Ellis.)

sued to Mr. Randolph when he said that his office was in 1403 Hobart Building.

Mr. HARRIS.—Mr. Randolph has never said that his office was at 1403 Hobart Building.

Mr. SWEENEY.—The application file which is in evidence states so.

Mr. HARRIS.—I do not think so. I want to show that this was merely a temporary address, and will show by Mr. Ellis that offices were open in Los Angeles, and that the man is in perfectly good standing in Los Angeles.

The COURT.—Do you see any objection to that?

Mr. SWEENEY.—No. As I say, the application file shows Charles Wesley Company was doing business, or, rather, Charles W. Randolph's brokerage license gives [379] the place of his address as 1403 Hobart Building.

Mr. HARRIS.—That address is changed.

Mr. SWEENEY.—There are many agents' certificates there of the Charles Wesley Company which were issued when he was no longer engaged in the partial payment plan. I want to limit it to this particular certificate here.

Mr. HARRIS.—Counsel has not stated when the partial payment plan was abandoned, nor has this witness testified to it. He has left the record in a state that Wesley Company is engaged in the partial payment plan.

The COURT.—Do you know when the partial payment plan ceased?

A. I do not.

(Testimony of Howard C. Ellis.)

The COURT.—Nor do you, Mr. Sweeney?

Mr. SWEENEY.—Yes, I do, but I do not think it is proper for me to develop it at this time unless you request me.

The COURT.—The proof will cover any field to which they may have gone.

Mr. SWEENEY.—If Mr. Harris wishes to ask the question, I think I might get it in.

Mr. HARRIS.—I have nothing to conceal.

The COURT.—Proceed.

In answer to your question, does your file show that J. W. Randolph, doing business as Charles Wesley Company, ever had his license revoked by the State Corporation Department for any reason? —the file for 1928 of J. W. Randolph, doing business as Charles Wesley Company, does not appear here. I have had dealings in connection with that license all during the year 1928, and I have been in contact with the Los Angeles office in connection with it. I do not recall the date of his withdrawal of his license; and I have no recollection like that, —that his license was absolutely ready for issuance, and Mr. Randolph, himself, refused to take it, because he had been indicted in this case. I had no correspondence of that kind and was not in touch to that extent with the Los Angeles office. No, I could not say that is not a fact, that that was the reason presented to your office by Mr. Randolph, that he would not accept his license in 1928. Estimating how many various agents were employed by Wesley & Company during the three or

(Testimony of Howard C. Ellis.)

four [380] years that they existed, I should say, roughly speaking, about fifty. Referring to the application of McClintock of October, 1925, which is handed me, I did not personally issue this license; but I recognize the signature, the form of the document, and the document itself. It is noted that he says that he worked for Cromwell Simon Company before as an agent, and despite that fact our office issued the license. At the time Charles Wesley got a license, in other words Jack Randolph got a license for Charles Wesley Company, there was no knowledge then in the Sacramento office, [381] where he got his license, of his trouble with the San Francisco office. I was not in the Sacramento office at that time, but I am familiar with the entire case by an examination of the records. The records will show that Jack Randolph had an agent's license for Cromwell Simon Co., and that this license was part of our records. The files here apparently do not show whether in 1925 our office made an examination of the books and records of the Charles Wesley Company, in December, 1925.

(By Mr. McMILLAN.)

Samuel H. Robinson, one of the defendants in this case, was employed in the State Corporation Department as a Deputy, which had to do with the granting of licenses to sell stock and securities in the State of California. We were both deputies together in the office; I would not say I was his superior. We were employed in similar capacities. He was there about two years, and left the employ-

(Testimony of Howard C. Ellis.)

ment of the State Corporation Department around about June 4, 1925. The records show that the hearing on the notice for the revocation of the license of Cromwell Simon & Co. was conducted in the office of the State Corporation Department May 5, 8, and 11, 1925. The audit was made March 25, 1925, and shortly thereafter a notice was prepared and sent to the brokerage concern, but as to the exact date I could not say; it will undoubtedly appear in the file under the proper date. Mr. Robinson did not appear as an attorney for Kassmir or Cromwell Simon at the hearing; at that time he was in the department as an employee. And, so far as I know, the persons named at the time of said hearing were utter strangers to him.

Mr. McGEE.—If your Honor please, this is cross-examination on behalf of the defendant Goodwin.

Q. When was the application of Orton E. Goodwin for a salesman's license made?

Mr. SWEENEY.—That is objected to as immaterial, irrelevant and incompetent, and not the best evidence, because it is already in [382] evidence.

Mr. McGEE.—Q. Running through these records which are in evidence, what is the date of Orton E. Goodwin's application for a license?

A. March 10, 1925.

Q. Have you any record of Orton Goodwin ever having applied for a license prior to that time?

A. I would have to examine the records of the

(Testimony of Howard C. Ellis.)

Sacramento office to find out that. In other words, he might have had a license prior to that time.

Q. Tell us about this Sacramento office. Isn't that the head office?

A. The Sacramento office is the head office.

Q. You say you had an office in San Francisco, and an office in Los Angeles, but the Sacramento office has copies of all of the files, has it not?

A. By law, the originals are all required to be kept in Sacramento.

Q. To be kept in Sacramento? A. Yes.

Q. Then the Corporation Commissioner, or his deputies in Sacramento, are advised as to everything being done by his deputies in California, whether it be in the San Francisco office, or the Los Angeles office?

A. In theory they ought to be.

Q. I did not ask you that. He is advised by reason of the original records being kept there: Isn't that correct? A. When they get there he is, yes.

Q. Now, so far as you know, Orton E. Goodwin never had a license as a broker or a salesman before this time?

A. His application would indicate that he had.

Q. That he had in California?

A. Yes. You asked me whether I knew. I don't know.

Q. You don't know anything about it?

A. His application indicates he had, because he says "Refer to file of licenses by J. H. Corbin Co. Los Angeles."

(Testimony of Howard C. Ellis.)

Q. Before a license is issued to a salesman, or an agent, as you call them, to work for someone else, there is a time elapses from the time the application is filed until the license is granted: Is that correct? A. There is now, yes.

Q. Was there then? A. Unfortunately, no.

Mr. McGEE.—I move to strike out the word “unfortunately,” and I would ask the Court to please admonish the witness to answer the question.

Q. I just want you to answer the question, if you please. [383] At that time was there any time elapsed between the filing and the granting of the license? A. The license shows two days.

Q. How long did that license to Orton E. Goodwin remain in force?

A. By its terms, it would remain in force until December 31, 1925, unless sooner revoked.

Q. Was it revoked?

A. So far as I know it has not been.

Q. Look at your records: Have you got any application, or have you any license granted to Orton E. Goodwin, as an agent for Wesley & Company?

Mr. SWEENEY.—The Government will stipulate there is none.

Mr. McGEE.—All right, that is stipulated, there is no license that was ever granted to Orton E. Goodwin as an agent of the Wesley Company. I think that is all.

Mr. McDONALD.—Q. At the time of this hearing, Mr. Ellis, you were very much, and I suppose

(Testimony of Howard C. Ellis.)

are still, opposed to the partial payment plan as it is called?

A. If I might answer that question in my own way, I will give you my views.

Q. I think that question can be answered "Yes" or "No."

A. It cannot. The partial payment plan of business is different with every individual viewpoint.

Q. However, the department has allowed certain firms to operate under the partial payment plan?

A. It is conceivable that there is a type of partial payment plan that would not be inherently vicious.

Q. This plan operated by Cromwell Simon Co. was largely the same plan operated by J. H. Corbin Co., was it not? A. I think not.

Q. Are you familiar with the plan operated by J. H. Corbin Co.? A. To some degree, yes.

Q. Have you studied it in connection with the plan operated by Cromwell Simon?

A. Not particularly, no.

Q. Do you know that the form of contract is practically, if not absolutely word for word, the same?

A. I was so informed by the members of Cromwell Simon Company.

Q. You largely brought this hearing on account of certain information you had as to the reputation of Mr. Cromwell Simon, didn't you?

A. That was connected with it, but not the entire basis for the hearing.

(Testimony of Howard C. Ellis.)

Q. During this hearing [384] you introduced evidence as to Mr. Cromwell Simon's dealings in other parts of the country, did you not?

A. In other brokerage concerns.

Q. You spoke of the amount of money withdrawn by Mr. Kassmir and Mr. Cromwell Simon. How much did you say that was? To the best of my knowledge, my opinion is it was about \$2,800; it might have been \$2,500.

Q. As a matter of fact, it was less than \$2,500?

A. I could not say. I could tell you by looking at that record.

Q. As a matter of fact, it was \$2,429.84, and out of that the sum of \$43.84 was a charge not for salaries. You are familiar with the brokerage business, are you not? A. Yes.

Q. Do you consider that the sum of \$250 a week is an exorbitant salary for a manager of a brokerage concern?

Mr. SWEENEY.—That is objected to as immaterial, irrelevant and incompetent, the particular objection being that \$2,484 up to the time of that hearing was \$250 a week.

Mr. McDONALD.—Q. This represents, Mr. Ellis, the withdrawal of Cromwell Simon and Harry Kassmir from February 27, 1925, to April 25, 1925; is that correct? A. Are those the dates given?

Q. Those are the dates in the transcript.

A. Then they are correct.

Q. Now, I will ask you if you consider the sum

(Testimony of Howard C. Ellis.)

of \$250 a week an exorbitant salary for the manager of a brokerage concern?

Mr. SWEENEY.—The same objection.

The COURT.—I will allow the question.

Mr. McDONALD.—Will you answer it?

A. Yes and no. Now, by way of explanation, where a brokerage concern is not using its customers' money, but is taking profit, \$250 week would not be considered an outrageous salary, but where the organizers of the concern did not put in any more than \$42 or \$45 of their own money, but were using their clients' money to pay themselves salaries with, and are not buying these securities, I consider it excessive.

Q. You say they are not buying securities. Was it not testified to by Mr. Cromwell Simon, and shown by the auditor, that a great deal of these securities had been purchased? [385]

A. Some of the securities had been purchased, yes.

Mr. McDONALD.—That is all.

Redirect Examination.

Mr. SWEENEY.—Q. Mr. Ellis, there are a considerable number of applications there. Do you know of your own knowledge that this particular application that you have in your hand were applications of the Charles Wesley Company doing business under the application that was filed in San Francisco, 1925?

A. That big bundle of agent's applications you speak about, you have reference to now?

(Testimony of Howard C. Ellis.)

Q. Yes.

A. Very few of them are for the year 1925, and are in connection with that 1925 license; you must remember that this license there represents the license issued for the latter part of 1925, all of the year 1926, and all of the year 1927.

Redirect Examination.

(By Mr. SWEENEY.)

I don't know what particular character of business Mr. Randolph was engaged in in 1926. These applications or certificates, because they happened to be in the file, do not necessarily mean that they are applications which were granted under the broker's license [386] of Mr. J. W. Randolph, doing business at 1403 Hobart Building. The sum of \$43.85, referred to by me under Mr. McDonald's cross-examination, represents the cash capital contribution on the part of Cromwell Simon and Harry Kassmir in their brokerage business. Mr. Robinson prosecuted the appeal from the decision of the corporation commissioner to the Superior Court of the City and County of San Francisco, as an attorney.

Recross-examination.

(By Mr. McMILLAN.)

With reference to when that appeal was prosecuted, an injunction was gotten out immediately after notice of our decision of the revocation, and the revocation will be the best evidence of that; I do not recall offhand what that was; it seems to

(Testimony of Howard C. Ellis.)

me it was June 6th, and the injunction was gotten out staying us from further interfering with Cromwell Simon Company, and it was submitted on briefs, and the decision came down I believe September 8th. Mr. Robinson left our office in June; he was a practicing attorney; and he represented them as an attorney at law in the prosecution of said appeal.

(By Mr. HARRIS.)

Mr. Randolph was not, as far as I remember and believe, ever present at the hearing in the department that I have been speaking about.

Q. Mr. Ellis, I call your attention to a document appearing in your file, headed "Order requiring keeping of certain records"; is that the ordinary regulations of your office that those brokers who have had licenses say from 1926 on be required to keep specific records of stock sold and purchased?

A. We were requiring this record of stock in 1925 and 1926, I believe.

Q. Now, the one that you have in your hand is particularly directed to Jack W. Randolph, doing business as Charles Wesley Company, is it not?

A. That is [387] correct.

Q. It is dated at what time?

A. January 20, 1926.

Q. It requires that every 60 days he shall present to you a report showing what stock he has purchased, and keeping his books in the manner required by your office? A. That is correct.

Q. Does your record show in any place that he

(Testimony of Howard C. Ellis.)

did not comply with your instructions in that regard?

Mr. SWEENEY.—I suggest that he be given the file and be given an opportunity to look over it.

Mr. HARRIS.—I am perfectly willing that the witness take his time, and he can come back.

Mr. SWEENEY.—I suggest that he be given the file and permitted to look over it, and give that particular information that you inquire about.

The COURT.—It is going to require investigation of the record. Is there any other question that would involve that same examination?

Mr. HARRIS.—I do not think so. There is just one more question I have in mind, and then he can come back afterward if he wants to.

The licenses that are issued are not continuing licenses; they terminate as of the 31st of each year in which they are issued and then the broker makes a request for a renewal. That is what happened with Mr. Randolph. The record shows that he conducted his business from several addresses, for instance, 720 Board of Trade Building, Los Angeles, December 24, 1926; and from December 24, 1926 to the time he gave up his license he was in the Board of Trade Building in Los Angeles. [388]

TESTIMONY OF V. H. PARKS, FOR THE
UNITED STATES.

V. H. PARKS, a witness produced on behalf of the United States, being first duly sworn, testified in substance, as follows:

Direct Examination.

(By Mr. SWEENEY.)

During the year 1925, probably during the months of February to September, I was book-keeper and cashier for Cromwell & Simon Co. After this I was employed in the same capacity for Charles Wesley Company.

(Here witness identifies signature of defendant Orton E. Goodwin, to letter dated April 22, 1925, which letter was marked, U. S. Exhibit 6 for Identification.)

(Here witness identifies signature of J. W. Randolph to letter addressed to Mr. G. A. Johnson, dated July 7, 1925, which letter is marked U. S. Exhibit 7 for Identification.)

(Here witness identifies his own handwriting, or signature, which was marked U. S. Exhibit 8 for Identification.)

HOWARD C. ELLIS, FOR THE UNITED
STATES (RECALLED).

HOWARD C. ELLIS, a witness recalled on behalf of the United States, testified in substance as follows:

In answer to the questions asked me at this

(Testimony of Howard C. Ellis.)

morning's session whether or not the Charles Wesley record or file shows that the reports required by the Corporation Commission were made, my answer is that the file does not show that.

Cross-examination.

(By Mr. HARRIS.)

I think the files show that one investigation was made by the Corporation Department; it might show more. [389]

Redirect Examination.

(By Mr. SWEENEY.)

The nature of the investigation was—they had a hearing. On January 18, 1926. As a result of the hearing the Charles Wesley Company agreed as a precedent to receiving a license for 1926 that they would discontinue, directly or indirectly, the idea of carrying on a partial payment plan business.

Recross-examination.

(By Mr. HARRIS.)

As far as the records show, they did discontinue and kept their word; I have nothing to the contrary. They were issued their license again in 1927.

TESTIMONY OF V. A. PARKS (RESUMED).

(By Mr. SWEENEY.)

(Witness is here shown letter dated June 24, 1925, addressed to Mr. S. Tiger, identifies the sig-

(Testimony of V. A. Parks.)

nature of Orton E. Goodwin thereto, and letter is marked U. S. Exhibit 9 for Identification.)

(Witness is here shown letter dated June 30, 1925, addressed to Mrs. Annie G. Tiger, signed Orton E. Goodwin, identifies said signature and letter is marked U. S. Exhibit 10 for Identification.)

(Witness is here shown letter addressed to Mrs. Annie G. Tiger, dated July 2, 1925, signed Orton E. Goodwin, identifies said signature and said letter is marked U. S. Exhibit 11 for Identification.)

(Witness is here shown letter dated September 5, 1925, addressed to Mrs. Annie G. Tiger and signed by J. W. Randolph, identifies the signature of J. W. Randolph and said letter is marked U. S. Exhibit 12 for Identification.) [390]

(Witness is here shown letter dated April 26, 1925, addressed to Mr. Ernest Hipp, signed by Orton E. Goodwin, identifies said signature, and said letter is here marked U. S. Exhibit 13 for Identification.)

(Witness is here shown letter dated June 29, 1925, addressed to Ernest Hipp, signed Orton E. Goodwin, identifies the signature of said Orton E. Goodwin, and said letter is marked U. S. Exhibit 14 for Identification.)

(Witness is here shown letters addressed to Mrs. B. M. Ogier dated April 25 and June 13, 1925, signed Orton E. Goodwin, and identifies the signatures as those of said Orton E. Goodwin, and said letters are marked U. S. Exhibits 15 and 16 for Identification.)

(Testimony of V. A. Parks.)

(Witness is here shown letter addressed to Miss Clara Oliver, dated October 9, 1925, signed Harry M. Kassmir, which signature witness identifies and counsel for said Kassmir stipulates is the signature of Kassmir, and said letter is marked U. S. Exhibit 17 for Identification.)

(Witness is here shown a letter dated October 28, 1925, addressed to Miss Clara Oliver, 1696 Green Street, identifies signature as that of J. W. Randolph, and said letter is here marked U. S. Exhibit 18 for Identification.)

(Witness is here shown letter addressed to Mr. W. Allen, 1717 Ellis Street, dated September 11, 1925, signed by J. W. Randolph, identifies the signature as that of J. W. Randolph, and letter is marked U. S. Exhibit 19 for Identification.)

(Witness is here shown letter addressed to W. F. Allen, 1717 Ellis Street, dated September 10, 1925, signed by J. W. Randolph, identifies signature as that of J. W. Randolph, and letter marked U. S. Exhibit 20 for Identification.)

Q. Just look at all of those signatures and see if you can identify them.

A. I would say they were all the signature of [391] J. W. Randolph.

Q. Do you know that they are? A. Yes.

Mr. SWEENEY.—This purports to be dated November 5, 1925, a letter addressed to W. F. Allen, 1717 Ellis Street, San Francisco, by J. W. Randolph, and I ask that it be marked Government's exhibit next in order, for identification.

(Testimony of V. A. Parks.)

(The document was marked U. S. Exhibit 21 for Identification.)

The next one is dated October 13, 1925, addressed to Miss Mary Esther Durham, 5838 Birch Court, Oakland, California, signed by J. W. Randolph, and ask that it be marked Government's exhibit next in order for identification.

(The document was marked U. S. Exhibit 22 for Identification.)

The next one is dated October 28, 1925, addressed to Miss Mary Esther Durham, 5838 Birch Court, Oakland, California, signed by J. W. Randolph, and I ask that it be marked Government's exhibit for identification next in order.

(The document was marked U. S. Exhibit 23 for Identification.)

The next one is dated February 2, 1926, addressed to Miss Mary Esther Durham, 5838 Birch Court, Oakland, California, signed by J. W. Randolph, and I ask that it be marked Government's exhibit for identification next in order.

(The document was marked U. S. Exhibit 24 for Identification.)

Q. I will show you a letter purporting to be signed by Harry Kassmir, and ask you if you can identify that signature. A. Yes.

Q. That is the signature of Harry M. Kassmir?
A. Yes.

Mr. SWEENEY.—This purports to be a letter dated [392] February 19, 1926, addressed to Miss Mary Esther Durham, 5838 Birch Court,

(Testimony of V. A. Parks.)

Oakland, California, and signed by Harry Kassmir, and ask that it be marked U. S. exhibit next in order, for identification.

(The document was marked U. S. Exhibit 25 for Identification.)

Q. I ask if you can identify that signature.

A. That is also the signature of Harry M. Kassmir.

Mr. SWEENEY.—It purports to be a letter addressed to Miss Mary Esther Durham, 5838 Birch Court, dated March 15, 1926, signed by Harry M. Kassmir, and I ask that it be marked U. S. exhibit next in order, for identification.

(The document was marked U. S. Exhibit 26 for Identification.)

Q. Are you familiar with that signature, Mr. Parks?

A. Yes, that is the signature of J. W. Randolph.

Mr. SWEENEY.—It purports to be a letter dated June 26, 1926, addressed to Mrs. Beans, and signed by J. W. Randolph, and I ask that it be marked U. S. exhibit next in order for identification.

(The document was marked U. S. Exhibit 27 for Identification.)

Q. Are you familiar with that signature?

A. Yes, that is the signature of Harry Kassmir.

Mr. SWEENEY.—That purports to be a letter dated July 7, 1926, addressed to Miss Mary Esther Durham, 5838 Birch Court, Oakland, California, and signed by Harry Kassmir, and ask that it be

(Testimony of V. A. Parks.)

marked U. S. exhibit next in order for identification.

(The document was marked U. S. Exhibit 28 for Identification.)

Q. Are you familiar with that signature?

A. Yes, that is the same signature, Harry Kassmir.

Mr. SWEENEY.—It purports to be a letter addressed to Mrs. Beans and Miss Durham, dated March 8, 1927, and signed by Harry [393] Kassmir, and I ask that it be marked U. S. exhibit next in order for identification.

(The document was marked U. S. Exhibit 29 for Identification.)

TESTIMONY OF MARY CHRISTENSEN, FOR THE UNITED STATES.

MARY CHRISTENSEN, a witness produced on behalf of the United States, being first duly sworn, testified in substance as follows:

Direct Examination.

(By Mr. SWEENEY.)

During the summer and autumn of 1925 I was stenographer for Mr. Robinson, whose office was at 1403 Hobart Building. I was not employed by the Cromwell Simon Co. I am familiar with the signature which you show me. It is mine.

(Witness is here shown letter addressed to Mr. Gustave A. Johnson, Postoffice Box 53, Chualar, California, signed by Cromwell, Simon & Co., by

(Testimony of Mary Christensen.)

Harry Kassmir, states that the signature is in her handwriting, and said letter was marked U. S. Exhibit 30 for Identification.)

(Witness is here shown a letter addressed to J. A. Barden, Attorney at Law, at Salinas, California, dated May 13, 1926, signed by Cromwell Simon Co., by Harry M. Kassmir, states that the signature is in her handwriting, and said letter was marked U. S. Exhibit 31 for Identification.)

EXCEPTION No. 23.

Mr. McDONALD.—If your Honor please, we object to this as immaterial, irrelevant, and incompetent, and a privileged communication, something occurring in the relationship between attorney and client while this young lady was employed at the office.

The COURT.—What are you objecting to?

Mr. McDONALD.—The introduction of this paper in evidence. [394]

The COURT.—It has not been offered.

Mr. McDONALD.—I want to ask certain questions concerning the signature. He has asked questions concerning the signature and the writing of this letter, to which we object.

Mr. SWEENEY.—No, I asked her to identify the signature of H. M. Kassmir.

Mr. McDONALD.—We object to that on the same ground.

The COURT.—I don't know whether it is pertinent to the issues, or not.

(Testimony of Mary Christensen.)

Mr. SWEENEY.—I will offer this for identification at this time.

(The document was marked U. S. Exhibit 31 for Identification.)

Q. I will ask you if you are familiar with that signature. A. Yes, that is mine.

Q. Whose signature is that? A. Mine.

Mr. SWEENEY.—This purports to be a letter addressed to Mrs. Annie Tiger, dated May 14, 1926, signed by Samuel H. Robinson. I offer it for identification.

(The document was marked U. S. Exhibit 32 for Identification.)

Q. I will show you that signature and ask you if you are familiar with that.

A. I think it is Mr. Robinson's.

Q. Are you sure?

A. It looks like his writing.

The COURT.—Q. Are you familiar with his writing? A. Yes.

Q. Do you believe it is? A. Yes.

Mr. SWEENEY.—Q. You believe it is his writing?

A. Yes.

Mr. SWEENEY.—This is a letter dated July 25, 1925, to Mr. Leroy F. Pike, City Attorney, Reno, Nevada, and signed by Samuel H. Robinson.

Mr. HARRIS.—This letter apparently goes to a point in [395] the indictment, and might affect my client, and I would ask permission, with the purpose of objecting on the ground of privilege,

(Testimony of Mary Christensen.)

as to how she got the information that that was Mr. Robinson's signature.

The COURT.—I do not see the purpose of it at this time, because, as far as I can see, all that is being done is laying a foundation for further identification of certain signatures, before they can be received. At that time I presume you can question on that very point.

Mr. HARRIS.—I can very plainly see the district attorney's point on this; he is having her identify a signature now, and then he will bring in somebody that will say that he received that letter. There could be no question of privilege raised at that time, so it must be raised now or waived, before the witness goes off the stand.

The COURT.—This examination cannot be broken up into as many parts as exhibits are offered now. You can make a notation of that exhibit and inquire as to it, as to her knowledge.

Mr. SWEENEY.—Q. I will show you that signature and ask you if you can identify that.

A. Yes, that is mine.

Mr. SWEENEY.—This purports to be a letter addressed to Leroy F. Pike, August 6, 1925, and signed by Samuel H. Robinson, and ask that it be marked U. S. Exhibit 34 for Identification.

(The document was marked U. S. Exhibit 34 for Identification.)

Q. And the same with these two.

A. These are not mine.

Q. Are you familiar with the handwriting?

(Testimony of Mary Christensen.)

A. Yes.

Q. Whose handwriting is it?

A. Mr. Robinson's.

Mr. SWEENEY.—At this time I wish to have marked for identification a letter addressed to Leroy F. Pike, Reno, Nevada, dated August 31, 1925, and signed by Samuel H. Robinson. [396]

(The document was marked U. S. Exhibit 35 for Identification.)

The next is a letter addressed to Leroy F. Pike, dated September 18, 1925, and signed by Samuel H. Robinson, and ask that it be marked U. S. Exhibit 36 for Identification.

(The document was marked U. S. Exhibit 36 for Identification.)

Mr. SWEENEY.—That is all.

Mr. McGEE.—Might I ask the witness a few questions?

The COURT.—Proceed.

Cross-examination.

Mr. McGEE.—Q. Between what dates were you employed by Samuel H. Robinson as his stenographer?

A. The latter part of 1925, until about August of 1926.

Q. During all of that period he was engaged in private practice as an attorney at law?

Mr. SWEENEY.—That is objected to as immaterial, irrelevant, and incompetent, and calling for the conclusion of this witness.

(Testimony of Mary Christensen.)

Mr. McGEE.—Whether she was employed as a stenographer to him as a lawyer is a question for this Court to learn in order that we may subsequently raise an objection. We move to strike this witness' testimony out on the ground that it is a privileged communication.

The COURT.—As far as the explanation of counsel is concerned, I think the objection should be sustained.

Mr. McGEE.—Q. Whence did you obtain the information as to whose signature that was?

A. Which signature?

The COURT.—How do you know that that is his signature?

Mr. McGEE.—Q. How do you know that that is his signature?

A. From seeing it at various times, it looks like his writing.

Q. Under what circumstances did you see him write, and where? [397] A. Signing letters.

The COURT.—Q. You saw him sign his signature?

A. Yes.

Q. You have seen the letters after he signed them? A. Yes.

Mr. McGEE.—Q. Did you see that in the course of your employment?

A. Yes.

Q. All the information with reference to the facts you have testified to was gained by you while you

(Testimony of Mary Christensen.)

were in the employ of Samuel H. Robinson: Is that correct? A. Yes.

Mr. McGEE.—I think that is all. I think it is in the record all ready that Samuel H. Robinson is an attorney at law.

Mr. SWEENEY.—Do I understand Mr McGee to say that the matter of knowledge of a signature acquired by a stenographer is a matter of confidential communication?

The COURT.—The only thing Mr. McGee announced, as far as the record shows, is that Mr. Robinson was an attorney at law.

Mr. McGEE.—And any information which this lady gained, which she just testified to was acquired by her during the time and in the course of her employment as a stenographer with Samuel H. Robinson.

The COURT.—Counsel, in his own opinion, is summing up what evidence has been introduced; that is the only effect of that statement.

Mr. McGEE.—If there is no other question by counsel I am going to make a motion.

Mr. HARRIS.—I would like to ask a few questions.

Mr. McGEE.—Go ahead.

Mr. HARRIS.—Q. While you were working for Mr. Robinson, what did you do, stenographic work?

A. Yes.

Q. And secretarial work?

A. Well, dictation, transcribing, answered the telephone.

(Testimony of Mary Christensen.)

Q. And did you see what character of work Mr. Robinson was doing? [398] What I mean to ask by that is, was he in the automobile business, or candy business, or what was he doing?

A. An attorney, of course.

Q. Did he go to court? A. Yes.

Q. Write up legal documents? A. Yes.

Q. During the whole time that you were there?

A. Yes.

Q. That was his business? A. Yes.

Q. You were his clerk and his secretary?

A. Yes.

Mr. HARRIS.—Now, if your Honor please, I make the motion that the testimony be stricken out on the ground that it is a privileged communication.

The COURT.—Q. You also wrote personal letters outside of the business letters while you were there? A. Not that I remember.

Q. You never wrote a personal letter?

A. I do not just remember any personal letters.

Q. They always related to business? A. Yes.

Q. He never wrote a letter that did not relate to some client? A. Not that I remember.

Q. The entire time that you were there?

A. No.

Mr. McGEE.—The defendant Goodwin joins in the motion to strike out the testimony.

Mr. McDONALD.—The defendant Kassmir joins in the motion.

Mr. McMILLAN.—And the defendant Robinson.

The COURT.—I think you ought to make some statement for the record, Mr. Sweeney.

Mr. SWEENEY.—I don't understand what the particular motion is.

Mr. HARRIS.—The motion is to strike out the testimony given by this witness from the record, on the ground it is a confidential communication.

The COURT.—On the ground it was procured in a confidential [399] relationship.

Mr. SWEENEY.—As I understand the rule, not all information that is acquired while a person is a clerk or a secretary is confidential; for instance, the matter of signature is a matter in which a person might be able to raise the curtain of confidential communication and use it as a screen for committing crime. The privilege, itself, is a matter of the client. If Mr. Robinson's clients were here, or something of that character, complaining as to it—

The COURT.—The matter of obtaining information as to a man's signature, in my opinion, is not a matter of confidential communication. The objection will be overruled.

Mr. HARRIS.—Exception.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

Mr. McDONALD.—Exception.

Mr. HARRIS.—I desire to answer counsel's statement. I just want to call your Honor's attention to the section covering that very point, Section 1881 of the Code of Civil Procedure (reading).

(Testimony of Leticia W. McClintock.)

The COURT.—It is not the opinion of the Court that that pertains to knowledge acquired of a person's handwriting. The ruling will stand.

Mr. HARRIS.—Note an exception.

Mr. McMILLAN.—Note an exception.

Mr. McDONALD.—Note an exception.

Mr. McGEE.—Note an exception.

TESTIMONY OF LETICIA W. McCLINTOCK,
FOR THE UNITED STATES.

LETICIA W. McCLINTOCK, a witness produced on behalf of the United States, being first duly sworn, testified in substance as follows: [400]

Direct Examination.

(By Mr. SWEENEY.)

During the year 1925 I resided at 3151 California Street. The signature on that letter you have asked me to identify is the signature of Harry Kassmir.

(Here a letter addressed to Miss Clara Oliver, 1696 Green Street, dated May 6, 1927, signed Harry Kassmir, was marked U. S. Exhibit 37 for Identification.)

(Here witness is shown two letters, and identifies the signatures as the signatures of Harry Kassmir. One is a letter addressed to Miss Clara Oliver, dated March 15, 1926, signed by Harry Kassmir and is marked U. S. Exhibit 38 for Identification. The other letter is addressed to Mr. John J. Allen, dated March 8, 1927, Seattle, Washington, and

(Testimony of Leticia W. McClintock.)

signed by Harry M. Kassmir, and is marked U. S. Exhibit 39 for Identification.

(Witness is here shown letter addressed to Mr. Ernest C. Hipp, dated April 1, 1925, signed by Cromwell Simon Company, E. Hoffman, marked in the corner "OEG/H." and is asked if she knew Eleanor Hoffman. Witness testifies that she knew Eleanor Hoffman, that she was a stenographer employed during February, March and April of 1925 for Cromwell Simon Company in the Mills Building; that the signature of said letter is that of said Eleanor Hoffman. The letter was marked U. S. Exhibit 40 for Identification.)

I know the defendants Harry M. Kassmir, Orton Goodwin, J. W. Randolph and Samuel H. Robinson. Met Mr. Kassmir for the first time probably the end of 1924, as salesman for J. H. Corbin & Co. I had been doing business with J. H. Corbin & Co. at that time. I recall when Mr. Kassmir left the employ of J. H. Corbin & Co.; had business transactions with him at that time; it was just a continuation. He contemplated going into business for himself, he asked me if I would like to see him improve his position, and I [401] said certainly, and then he brought up Mr. Cromwell Simon. I am not sure about the date. It might have been in January, 1925. At that time I had securities in the custody or control of J. H. Corbin & Co. which I turned over to Kassmir as collateral for the stock that he was buying for me. The purchase agreements, which you now show me, I signed them. I

(Testimony of Leticia W. McClintock.)

never did business with anybody but Kassmir. I bought 100 shares of General Motors, at least he was supposed to buy them for me. I gave as collateral 20 shares of P. G. & E. A copy of the contract that I signed was not given to me. Under the second purchase agreement I bought 100 shares of Marland Oil, and gave as collateral security 12 Owl Drug Preferred. Then I bought 100 Radio Corporation of America shares, and put up as collateral 10 shares of Standard Oil of N. J. and 10 of Great Western Power. The next purchase agreement, I bought 100 shares of Union Oil of California, and the next purchase agreement, 100 shares of Standard Oil of New Jersey. The latter purchase agreement was March 13, 1925, and I put up as collateral or security 10 shares of Great Western Power. And the next one is 10 shares of Tennessee Electric Company. The date of the next purchase agreement was March 13, 100 shares of Pacific Oil, and the amount of collateral put up by me was 13 shares of Anglo London Paris National Bank. I never got any of the stock that I ordered, and I never got returned to me any of the stock or security that I put up as collateral. I had so many conversations with Mr. Kassmir immediately after the formation of the Cromwell Simon Company, I have forgotten any one in particular. The character of business he said he was going into was to purchase stock on the installment plan. He said Cromwell Simon had put in \$200,000. Later on, I was called down to the Corporation Commissioner at a hear-

(Testimony of Leticia W. McClintock.)

ing. The contract dated May 15, 1925, which you are showing me, I have read it so many times I know it by heart. I signed this contract after the hearing and it says here why I signed it. It was to help him out [402] before the Corporation Department.

EXCEPTION No. 24.

Mr. SWEENEY.—If your Honor please, I will offer this in evidence as Government's Exhibit next in order.

The COURT.—For identification, or in evidence?

Mr. SWEENEY.—In evidence, your Honor.

Mr. HARRIS.—That is objected to, as far as the defendant Randolph is concerned as being in no way binding upon him, a hearsay transaction between strangers to him, immaterial, irrelevant and incompetent.

Mr. McMILLAN.—The defendant Robinson joins in that objection.

The COURT.—The objection will be overruled.

Mr. SWEENEY.—It is part of the scheme, that is the Government's contention.

The COURT.—It will be received and marked next in order.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 12.)

Mr. SWEENEY.—I will read it. (Reading.)

(Testimony of Leticia W. McClintock.)

EXCEPTION No. 25.

Q. Now, Mrs. McClintock, let me have, please, the circumstances under which this agreement was entered into by you. Let me withdraw that question. I will ask you can you identify that. A. Yes.

Q. What is that? That is your signature, is it not? A. Yes.

Mr. SWEENEY.—I ask that this be introduced in evidence as Government's exhibit next in order.

Mr. HARRIS.—The same objection as made to the last exhibit.

Mr. McMILLAN.—We join in the objection.

The COURT.—The same ruling.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 13.)

Mr. SWEENEY.—Q. Will you please tell the Court and jury the circumstances under which that contract which I read was entered into, and this receipt?

The COURT.—Q. What were the circumstances under which you made this contract and the receipt?

Mr. SWEENEY.—Q. Take them in your hand and tell us in your own language the circumstances.

The COURT.—As to how you came to enter into that—not as to the terms, but how you came to enter into that.

A. Well, he called on me and he wanted me to cancel the certificate that they had issued for the stock I had purchased, or that I thought I had

(Testimony of Leticia W. McClintock.)

purchased—he came to me, and in order to get things straightened out with the Corporation Department he asked me if I would cancel these certificates of purchase, and in return he made out this contract, and I was to receive \$200 a month.

Q. In other words, he wanted you to substitute these payments for those certificates?

A. Yes. [404]

Q. Did he tell you why he wanted to do it?

A. Well, to clear his name before the Corporation Department, so he could be helped out in some way, I don't know his exact words.

Mr. SWEENEY.—With reference to that receipt, as I understand, Mrs. McClintock, you gave that receipt?

A. I received nothing for this receipt; he simply made it out and asked me to sign it, and that was also in relation to the Corporation Department.

Q. You gave that receipt to Mr. Kassmir, did you not?

A. I did, but I received nothing in return.

Q. And later on he returned the receipt to you?

A. I think, I am not quite sure, but I think I signed two; I think he kept one and gave me this one.

The COURT.—They were duplicates, however?

A. Yes.

Mr. SWEENEY.—Q. In other words, he still has that receipt from you?

A. I think so, I am not sure about it; I am not so sure, but I think I signed two.

(Testimony of Leticia W. McClintock.)

Q. How many payments of \$200 were made to you under the contract?

A. Well, there were quite a few, but I could not say exactly how many.

The COURT.—Q. What do you mean by “quite a few”?

A. I meant I got them for over a year, until he went to Seattle. I never talked business with Mr. Randolph. Mr. Randolph and Mr. Kassmir never called at my house. About September, 1925, or 1926. I am not so sure about that. Mr. Kassmir did speak about his business enterprise in Los Angeles.

EXCEPTION No. 26.

Q. What was the nature of the conversation you had with Mr. Kassmir at that time?

A. He was going down—

Mr. HARRIS.—That is objected to as calling for the conclusion of the witness, what the nature of it was, and no proper [405] foundation has been laid as to the parties present.

Mr. SWEENEY.—Q. Who was present at that conversation, Mrs. McClintock? A. Mr. Kassmir.

Q. What was the conversation, what did Mr. Kassmir say?

Mr. McGEE.—That is objected to on behalf of the defendant Goodwin on the ground that it could not be binding on him, and because he was not connected with the concern in Los Angeles, he had no license connected with any enterprise in Los Angeles, he worked in San Francisco for three months,

and after that had nothing to do with it; we object to any conversation this lady had with anybody about any Los Angeles concern.

Mr. HARRIS.—I would like to add the further objection that it is incompetent, for the reason that it is the alleged relation of a co-conspirator after any conspiracy which might have existed had been consummated. This is now in September, 1925, at a time when this conspiracy terminated.

The COURT.—When do you fix the date that you can put in proof to?

Mr. SWEENEY.—There is an allegation in the indictment that prior to the date of certain letters, and the last letter is somewhere in 1927, if I remember right.

The COURT.—Have you it on record, so that we can know?

Mr. SWEENEY.—Certainly there are letters in 1926.

The COURT.—I am just asking you what date you are contending that you can put in proof for, so that we can fix the date after which the declarations of a defendant will only appertain to himself and not to his associates.

Mr. SWEENEY.—March 8, 1927.

Mr. HARRIS.—Is it my understanding that it is counsel's contention that up to March, 1927—

Mr. SWEENEY.—March 8, 1927. [406]

Mr. HARRIS.—(Continuing.) —the scheme had not until that time been consummated or completed: Is that it?

(Testimony of Leticia W. McClintock.)

Mr. SWEENEY.—It was in operation up to that time.

Mr. HARRIS.—Of course, if counsel connects that up my objection may not be good.

The COURT.—That is why I wanted him to fix the date.

Mr. McGEE.—How, do I understand that there is a date when this conspiracy is supposed to have ceased, or is it still in existence?

Mr. SWEENEY.—It was in existence up to March 8, 1927.

Mr. McGEE.—Not after that?

Mr. SWEENEY.—We do not contend it is in existence now.

The COURT.—Q. This date is what, that you are testifying to?

Mr. SWEENEY.—September, 1925, when he went to Los Angeles.

The COURT.—The objection will be overruled and the question allowed.

Mr. HARRIS.—We will note an exception, and reserve our motion to strike out.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. What was the nature of the conversation you had with Mr. Kassmir—what was the conversation you had with Mr. Kassmir at that time?

A. That he was going down to Los Angeles to open up a business to get away from the Corporation Department of San Francisco.

Q. Did he say who was going down with him?

(Testimony of Leticia W. McClintock.)

A. Mr. Randolph.

After Mr. Kassmir went to Seattle, which I believe was in March, 1926, I did make a request of him to return to me the stock and money I had invested with him. It might have been in 1925, it might have been in 1927; my confusion is as to whether it was one year ago or two years ago. I had a conversation with Mr. [407] Kassmir concerning some business in Reno. I am mixed up in the year again. It was before he went to Los Angeles. He went in September, but I don't remember the year. The telegram you show me to refresh my recollection,—September 20, 1925, that is not correct. That telegram is from Los Angeles; I received that on Gough Street; that was not in 1925, it was long after the hearing before the Corporation Commissioner that I had this conversation with Mr. Kassmir concerning the Reno business; it must have been along in August, July or August.

EXCEPTION No. 27.

Q. What was the conversation you had at that time with Mr. Kassmir?

Mr. McGEE.—Objected to on behalf of the defendant Goodwin on the ground it is immaterial, irrelevant, and incompetent, hearsay testimony, and not binding on the defendant Goodwin, unless it is shown he was present at the time the conversation took place.

A. It was in August, 1925.

(Testimony of Leticia W. McClintock.)

Mr. HARRIS.—That objection is adopted by the defendant Randolph.

Mr. McMILLAN.—Also by the defendant Robinson.

The COURT.—Overruled.

Mr. McGEE.—Exception.

Mr. HARRIS.—Exception.

Mr. McMILLAN.—Exception.

Mr. SWEENEY.—Q. What was the conversation, as best you remember it.

A. Before he went to Reno, or before he opened the office in Reno?

Q. Before the Reno business.

A. He was just going to open up an office up there.

Q. What was the rest of the conversation?

A. I talked so much with him that I don't remember.

Q. You don't remember at this time?

A. No, not the exact conversation. [408]

Q. Did he say who was going to open up the office with him up in Reno?

Mr. HARRIS.—That is objected to as leading and suggestive. She has already said she does not know.

The COURT.—I will allow the question.

Mr. HARRIS.—Exception.

A. It was supposed to be a continuation of the office in San Francisco.

Mr. McGEE.—I ask that the answer go out as calling for a conclusion, and not responsive.

(Testimony of Leticia W. McClintock.)

The COURT.—Q. Did he say that, or was that your conclusion?

A. Well—

Q. Just answer my question. Did he say that to you, or is that merely your conclusion?

A. No, he said it to me.

The COURT.—The motion is denied.

EXCEPTION No. 28.

Mr. SWEENEY.—Q. I will ask you Mrs. McClintock, if you can identify these letters.

A. Yes.

Q. From whom did you get them?

A. From Harry M. Kassmir.

Q. How did they come to you?

A. Through the mail.

Q. Do you know when you received them, in what year? A. 1926.

Q. 1926? A. Yes.

Mr. SWEENEY.—I would like to have these marked as Government's exhibit next in order, your Honor.

Mr. McGEE.—On behalf of the defendant Goodwin, I object on the ground they are immaterial, irrelevant, and incompetent, and hearsay, as far as Goodwin is concerned, he having severed his connection with this company on the 2d of July, 1925, and all of this transaction having taken place subsequent to that time.

Mr. McMILLAN.—We make the same objection as to the defendant [409] Robinson.

(Testimony of Leticia W. McClintock.)

The COURT.—Overruled.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—Objected to on the ground it is hearsay, incompetent, the proper foundation not having been laid.

The COURT.—I do not know, unless I see the letters, as to whether they do pertain to this matter, at all. (Reading.)

Q. Who is this "Harry"?

A. That is Harry M. Kassmir.

The COURT.—They will be received in evidence. The objection is overruled.

Mr. HARRIS.—Exception.

Mr. McGEE.—Exception.

Mr. McMILLAN.—Exception.

(The document was marked U. S. Exhibit 14.)

(Which original exhibit is before this Honorable Court by stipulation and order.)

Mr. SWEENEY.—Q. Now, Mrs. McClintock, reverting once more to these certificates here, what was your conversation with Mr. Kassmir with reference to the purchase of the stock which you ordered?

A. He purchased it on the installment plan.

Q. Do you know that of your own knowledge?

Mr. McGEE.—I submit, if your Honor please, he has asked the question, and he is bound by the answer of the witness.

The COURT.—I will allow the question.

Mr. McGEE.—Exception.

(Testimony of Leticia W. McClintock.)

Mr. SWEENEY.—Q. Did you understand my question?

The COURT.—Q. Did you take someone's word for it that it was purchased, or do you know yourself, that it was purchased?

A. I did not see it.

Q. In other words, you base your answer on the fact that he told you. A. Yes.

Q. That is all you know about it?

A. Yes, I did not see them.

Mr. SWEENEY.—Q. Did you ever get them?

A. No.

Q. Did you ever get your collateral back?

A. No. [410]

Mr. SWEENEY.—That is all from this witness at this time.

Mr. McMILLAN.—On behalf of the defendant Robinson—

The COURT.—Any further questions?

Mr. McMILLAN.—I have no question.

EXCEPTION No. 29.

Mr. SWEENEY.—That is all from this witness at this time.

The COURT.—Any further questions?

Mr. McMILLAN.—I have no questions.

On behalf of the defendant Robinson we move to strike all of the testimony of this witness upon the following grounds: First, that the testimony as against him is hearsay, the proper foundation has not been laid, and there is no testimony showing

(Testimony of Leticia W. McClintock.)

that he ever authorized or sanctioned, or took any part in any statements or representations that were made, that he ever authorized or sanctioned any of the letters that were sent through the United States mail and the transaction testified to by the witness, so far as he was concerned, was *res inter alios acta*, and there is no testimony showing that he ever made any statement or representation or sanctioned [411] or authorized any representation made in furtherance either of a general plan or scheme to defraud, or of a general plan or scheme in furtherance of fraud to use the United States mails.

The COURT.—The objection is overruled.

Mr. McMILLAN.—Exception.

Mr. HARRIS.—The same objection on behalf of the defendant Randolph.

The COURT.—The same ruling.

Mr. HARRIS.—Exception.

Cross-examination.

(By Mr. McDONALD.)

I was a client of J. H. Corbin & Co. for some time, when Mr. Kassmir was the manager of that company. I was friendly with Mr. Kassmir to a certain extent, that he took an interest in me. He called at my home in a business way. I knew Mr. Cromwell Simon. Met him at my house. He came up to tell me that he was going to go into the brokerage business with Mr. Kassmir. There was nothing said about Mr. Simon's business; it was Mr. Kass-

(Testimony of Leticia W. McClintock.)

mir's business. Mr. Simon did not tell me anything about this. Mr. Kassmir did all the talking. Nothing mentioned about Mr. Simon making a great deal of money in Cast Iron Pipe but Kassmir said that Simon was going to put \$200,000 into the business. They started in business in the Mills Building. The understanding was that if he went into business I should transfer my account. At that time I had an account with J. H. Corbin Company and there was some slight indebtedness in that account, some payments that I had not paid up on stock that I was purchasing on the partial payment plan from Corbin & Co. at that time. I don't remember anything being said about Mr. Kassmir taking it up in the firm of Cromwell Simon. The idea was that it was to go on as before and the account was to be transferred over to Cromwell Simon Company. Shortly before the hearing before the Corporation Commission, Mr. Kassmir came to see me but he did not tell me that he was deceived in regard to Mr. Cromwell Simon, that Mr. Cromwell Simon did not have \$200,000. He did not tell me that the Corporation Commissioner was questioning their financial responsibility. He said they had to go up there for some reason, but he did not specify just what. It was not until after the hearing that I made the agreement with Mr. Cromwell Simon; Mr. Kassmir sent me \$200.00 a month up to the time [412] he went to Seattle. I had to do a lot of talking sometimes to get it, but I finally got it. Yes, I got \$200.00 when he went up there,

(Testimony of Leticia W. McClintock.)

but I don't know just how many times it was. That was when I had to razz him to death to get it. Edward McClintock, who has been mentioned here as an agent of the Cromwell Simon Company. is my son.

(By Mr. HARRIS.)

Did not see Mr. Randolph very often. I was around the offices of Cromwell Simon Co. a few times, not many. Saw Mr. Randolph maybe two or three times. Knew Mr. Kassmir and Mr. Simon during all of their business affairs here in San Francisco. Mr. Randolph did not do any business with me directly.

Redirect Examination.

(By Mr. SWEENEY.)

The value of the stock and money I gave to Mr. Kassmir was approximately \$14,000, but it is worth a whole lot more today.

Mr. SWEENEY.—I would like to read this letter (reading).

Q. This letter speaks of a check coming to you. Did you ever get it?

A. I could not say. His saying so did not mean I was going to get it.

Mr. SWEENEY.—That is all.

Mr. HARRIS.—I just want to ask one question I possibly overlooked. ^s